TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 625.

W. J. MURRAY, JOHN McSWEEN, AND AVERY PATTON, CONSTITUTING THE STATE DISPENSARY COMMISSION OF SOUTH CAROLINA, ET AL., PETITIONERS,

vs.

WILSON DISTILLING COMPANY ET AL. AND THE FLEISCHMANN COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

PETITION FOR CERTIORARI FILED NOVEMBER 18, 1906.
CERTIORARI AND RETURN FILED DECEMBER 23, 1906.

(21,421.)

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TRANSCRIPT OF RECORD.

Caption.

THE UNITED STATES OF AMERICA,
DISTRICT OF SOUTH CAROLINA,
IN THE CIRCUIT COURT,
FOURTH CIRCUIT.
} IN EQUITY.

At a Circuit Court of the United States for the District of South Carolina, begun and held at Asheville, North Carolina, on the 29th day of February, 1908, and the 7th day of March, 1908.

Present: The Honorable J. C. Pritchard, United States Circuit Judge for the Fourth Judicial Circuit, Presiding.

Among other were the following proceedings, to-wit:

Wilson Distilling Company et al., Complainants,
versus
W. J. Murray et al., Defendants.

The Fleischmann Company, Complainant,
versus
W. J. Murray et al., Defendants.

Wilson Distilling Company et al., Complainants,
versus
W. J. Murray et al., Defendants.
and
The Fleischmann Company, Complainant,
versus
W. J. Murray et al., Defendants.

} Consolidated Causes.

Bill of Complaint.

(2) Filed December 31, 1907.

In the Circuit Court of the United States for the District of South Carolina. In Equity.

Wilson Distilling Company, Complainant,
vs.
W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, Defendants.
} Bill of Complaint.

To the Honorable the Judges of the Circuit Court of the United States for the District of South Carolina:

Wilson Distilling Company, a corporation duly created, organized and existing under and by virtue of the laws of the State of New Jersey, and a resident and citizen of said State of New Jersey, having its principal place of business at Baltimore, in the State of Maryland, brings this, its bill of complaint, against W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, citizens and inhabitants of the State and District of South Carolina, the said W. J. Murray residing in the City of Columbia; the said John McSween in the City of Timmonsville; the said B. F. Arthur in the City of Union, the said C. K. Henderson in the City of Aiken and the said Avery Patton in the City of Greenville in said State.

And therefore your orator complains and says:

1. That the Wilson Distilling Company, complainant, is a body corporate under the laws of the State of New Jersey and is a resident and citizen of the said State of New Jersey, having its principal place of business in the City of Baltimore in the State of Maryland.

2. That the defendants are citizens and residents of State of South Carolina.

3. That the matter in controversy in this action exceeds in value the sum of two thousand dollars exclusive of interest and
(3) and cost, as will hereinafter more fully appear.

4. That on or about the 16th day of February, 1907, the Legislature of the State of South Carolina enacted a statute

providing for a appointment of a Commission, to be composed of five persons, to wind up the affairs of the State dispensary which had theretofore existed in said State for several years and which had theretofore been abolished by a prior enactment of the Legislature of said State.

5. That the defendants, W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, were duly appointed members of said Commission, and duly accepted and qualified as such prior to March 17, 1907, and have ever since composed the said Commission.

6. The said Statute provides *inter alia* that "It shall be the duty of said Commission to close out the entire business and property of the State Dispensary, except real estate, and including stock in the several County Dispensaries, by disposing of all goods and property connected therewith, by collecting all debts due and by paying from the proceeds thereof all just liabilities at the earliest date practicable."

7. That on or about the —— day of ————, 1906, your orator sold to the said State Dispensary of State of South Carolina through its Directors, who were the proper officers authorized by law to purchase wines and liquors for said Dispensary, whiskies and liquors to the amount and value of two thousand nine hundred and seventy-nine and 12/100 dollars ($2,979.12), and your orator shipped said goods to the State Dispensary and the same were accepted by it through its duly authorized officers, and as your orator is informed and believes the same were sold by said Dispensary at a large profit; that an invoice and account of the goods so sold and delivered were duly rendered by your orator to said State Dispensary through its proper officers and agents and the same was duly accepted and approved and the amount thereof became due to your orator as upon account stated.

8. That no part of the price of said whiskies and liquors has ever been paid, and the whole thereof was justly due the (4) complainant by said State Dispensary at the time of the appointment of said Commission and still is justly due it. That said whiskies and liquors so sold to the said Dispensary were reasonably worth the sum of two thousand nine hundred and seventy-nine and twelve one-hundredth dollars ($2,979.12).

9. Your orator further alleges, upon information and belief, that the defendants have closed out and disposed of all the stock and personal property of said Dispensary, and col-

lected all debts due it and that said defendants now have on hand funds sufficient to satisfy and pay off in full all just and proper claims against said Dispensary, but your orator is advised and believes and so charges, that said defendants deny that there is enough money in the hands of the Commission with which to pay said claims and that said defendants have lately made such denial in a verified answer filed by them in a cause depending in this court wherein Garrett and Company are the complainants and the defendants above named are defendants. Your orators are informed, advised and believe and aver the facts to be, that if any such deficiency exists, as is claimed by said defendants, that the same has occurred by reason of the fact that said defendants have approved and allowed, and are about to pay, a large number of claims which have not been properly audited and many of which are for improper and excessive amounts and others of which, for large amounts, are not valid claims against said Dispensary or against the fund in the hands of the defendants by reason of the fact that they are for sales illegally made in that they did not comply with the laws of said State governing sales to said Dispensary.

10. Your orator further alleges, upon information and belief, that said defendants propose to, and unless restrained by the order of this court, will arbitrarily pay a portion of the claims against said Dispensary and pay over the balance and a large part of the funds in their hands as aforesaid, into the public treasury of the State of South Carolina. And your orator alleges that such proposed action of said defendants would operate to defeat the just claim of your orator and of (5) other persons having just claims against the Dispensary and against said fund.

11. Your orator is advised and believes that the enactment of the Legislature of South Carolina, as aforesaid, imposed upon the defendants the duty to pay the claim of your orator out of said moneys in their hands.

12. That your orator has demanded of defendants the payment of said claim out of said funds but they have failed and refused and still fail and refuse to pay the same.

13. That unless they are restrained by preliminary injunction the defendants will pay out on improper claims a large part of the funds in their hands aforesaid and will cover into the public treasury of the State of South Carolina a large

part of said fund, to the irreparable damage of your orator and of other persons having just claims against said Dispensary and against said fund in the hands of the defendants.

14. Each and every allegation of fact in this bill contained is made upon information and belief of the solicitor for the complainant, by whom the same is verified.

15. This suit is brought by your orator on its own behalf and on behalf of all other persons having just claims against said State Dispensary and against the fund in the hands of the defendants, who may hereafter join herein.

To the end therefore that your orator may have that relief which it can only obtain in a court of equity, and that the said defendants may answer the premises, but not upon oath or affirmation, an answer under oath being hereby expressly waived by your orator, he now prays the court that a preliminary injunction be issued restraining said defendants and each and every of them from paying over or disposing of said funds to any creditor or to the public treasurer of the State of South Carolina until the proper amounts due each creditor shall have been first duly ascertained and determined as this court may (6) direct until final hearing herein; and that your orator may have such other, further and general relief in the premises as the nature of the circumstances of the case may require.

May it please your honor to grant to your orator a writ of subpœna to be directed to the said W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, thereby commanding them at a certain time and under a certain penalty therein to be limited personally to appear before this Honorable Court and then and there full, true, direct and perfect answer make to all and singular the premises, and to stand to, perform and abide by such order, direction and decree as may be made against them in the premises as shall seem meet and agreeable to equity.

And your orator will ever pray.

T. M. MORDECAI,
FRANK CARTER &
H. C. CHEDESTER,
Solicitors for Complainants.

Verification of Bill of Complaint.

THE UNITED STATES OF AMERICA, DISTRICT OF SOUTH CAROLINA.

Wilson Distilling Company
vs.
W. J. Murray et al.

Frank Carter, being sworn, says that he is one of the solicitors for the complainant in the above entitled suit and that he verifies this Bill of Complaint herein on behalf of said complainant; that said verification is made by this affiant for the reason that said complainant is a foreign corporation and that no officer or agent of said corporation capable of making said cerification is present within the district or place where said Bill of Complaint was prepared to the knowledge and belief of this affiant; that the foregoing Bill of Complaint is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

(7) FRANK CARTER.

Sworn to and subscribed before me this the 30th day of December, 1907.

GILMER WELCH,
[Seal] Notary Public.

Subpœna Ad Re.

(8) Filed December 31, 1907.

UNITED STATES OF AMERICA, DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT.

The President of the Pnited States of America to W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton:

You are hereby strictly commanded and firmerly enjoined that all manner of excuses being laid aside, you be and appear before the Judges of the Circuit Court of the United States for the District of South Carolina at Charleston, S. C., on the Rules day of February, twenty days after the service thereof; then and there true and perfect answer to make upon your corporal oath on the Holy Evangelists, to all such matters as shall be objected against you in the Bill of Complaint of Wilson Distilling Company.

And also, That you do, on the rules day next immediately after the day appointed and expressed, file, or cause to be filed, in the Registry of said Court, your plea, answer or demurrer, to the said bill of complaint.

Herein fail not, under the pain of one hundred pounds.

Given under the seal of the said court.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States of America, at Charleston, in South Carolina, District aforesaid, the 30th day of December, in the year of our Lord one thousand nine hundred and seven, and in the one hundred and 33d year of the Soverignty and Independence of the United States of America.

T. M. MORDECAI,
FRANK CARTER,
H. C. CHEDESTER,
Complainant's Solicitors.

Memorandum.

The defendants will take notice that they are required to enter their appearance in this suit, in the Clerk's office of the Circuit Court of the United States for the District of South
(9) Carolina, on or before the first Monday of February, 1908, otherwise the bill will be taken pro-confesso against them.

C. J. MURPHY,
[Seal] C. C. C. U. S. Dist. S. C.

Restraining Order.

(10) Filed December 31, 1907.

In the Circuit Court of the United States for the District of South Carolina. In Equity.

Wilson Distilling Company, Complainant,
vs.
W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, Defendants.
} Order.

Upon hearing read the verified Bill of Complaint herein, praying for an injunction restraining the defendants, W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, their successors, agents and attorneys from pay-

ing over or disposing of the funds in their hands as Commissioners for the purpose of winding up the State Dispensary of the State of South Carolina, to any creditor or to the Public Treasurer of said State, until the proper amount due each creditor shall have first been duly ascertained and determined, as the court may direct until the final hearing herein, and it appearing therefrom that the said defendants may proceed to pay out and pay over said fund to the irreparable damage of the complainant, unless restrained therefrom:

Now, in consideration thereof, and upon motion of T. M. Mordecai, Frank Carter and H. C. Chedester, solicitors for the complainants.

It is ordered that said defendants, their successors, agents and attorneys, and each and every of them be, and they are hereby restrained from paying over or disposing of the funds in their hands as aforesaid, to any creditor or to the Public Treasurer of said State, until the proper amount due each creditor shall have first been ascertained and determined, as the court may direct, until the further order of this court.

And it is further ordered that said defendants be, and they are hereby required to show cause, if any they have, before me, on the 11th day of January, 1908, at the United States Court House in Asheville, in the State of North Carolina, at 10 o'clock in the forenoon, why the said defendants, their successors, agents and attorneys, and each and every of them, (11) should not be so restrained until the final hearing herein.

And it is further ordered that a copy of this order and of the Bill of Complaint herein be served upon said defendants.

And it is further ordered that the complainant above named do execute a bond in the penalty of five thousand dollars ($5,000.00), conditioned for the payment of the defendants of all damages and costs they or either of them may sustain by reason of this order, should the same hereafter be adjudged to have been improvidently made, as to all or any of them; that said bond shall be duly approved by either of the Circuit Judges of this Circuit, or by any of the District Judges of the District of South Carolina, or by the Clerk of this Court at Asheville, N. C.

And it is further ordered that any defendant hereto have leave to move before me at any time before the hearing herein ordered, upon five days notice to the solicitors for the complainant, to vacate this order or any part thereof, as to such defendant.

Done at Asheville, North Carolina, at Chambers, this the 30th day of December, 1907.

J. C. PRITCHARD,
United States Circuit Judge.

Marshal's Return on Service.

(12) Filed December 31, 1907.

UNITED STATES OF AMERICA,
District of S. C.

I hereby certify and return that I served the annexed Bill of Complaint Sub Ad Re and Order on the therein named W. J. Murray, John McSween, C. K. Henderson & Avery Patton, at Columbia, S. C., on Jany. 1, 1908, and on B. F. Arthur, at Union, S. C., on Jan. 2, 1908. By handing to and leaving a true and correct copy thereof with each personally at places stated in said District on the 1 & 2 day of Jany., A. D., 1908.

J. DUNCAN ADAMS, U. S. Marshal.
V. P. CLAYTON, Deputy.

Injunction Bond.

(13) Filed 31st December, 1907.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA. IN EQUITY.

Wilson Distilling Company, Complainant,
vs.
W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, Defendants.

Undertaking on Injunction.

Know all men by these presents, that we, Wilson Distilling Company, as principal, and American Bonding Company of Baltimore, as surety, undertake and become bound to W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, the defendants above named, in the sum of five thousand dollars ($5,000.00), lawful money of the United States of America, well and truly to be paid to them; to be void, however, if the plaintiff is the above entitled action shall pay to the defendants above named such damages, not exceeding the sum above specified, as they may sustain by reason of the restraining order and injunction granted by His Honor, J. C. Pritchard, United States Circuit Judge, on the 30th day of

December, 1907, if the court shall finally decide that the said plaintiff was not entitled to said restraining order and injunction.

This December 30th, 1907.

WILSON DISTILLING COMPANY, [Seal]
By H. C. CHEDESTER, Its Attorney & Solicitor.
AMERICAN BONDING COMPANY
OF BALTIMORE,
By LOUIS M. BOURNE, Local Vice-President.

Attest:

[Seal] JNO. P. KERR,
Local Assistant Secretary.

AMERICAN BONDING COMPANY
OF BALTIMORE,
By T. MOULTRIE MORDECAI, Attorney in fact.

The foregoing bond is affirmed, Dec. 30th, 1907.

J. C. PRITCHARD,
U. S. Circuit Judge.

Order Modifying Restraining Order.

(14) Filed January 13, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA. IN EQUITY.

Wilson Distilling Company, Complainant,
vs.
W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, Defendants.
} Order.

It is ordered that the hearing upon the temporary restraining order heretofore granted in the above entitled cause be continued, to be heard before his Honor J. C. Pritchard, United States Circuit Judge, at his Chambers, in Asheville, North Carolina, on the 29th day of February, 1908; and that said temporary restraining order continue of force until so heard.

This order is without prejudice to the right of the defendants and they are hereby allowed in the meantime to proceed to audit and allow the claims of the creditors of said State Dispensary and to apply to this court from time to time for leave to pay the claims so audited and allowed. The Clerk will certify a copy of this order to each of the defendants.

This the 11th day of January, 1908.

J. C. PRITCHARD,
U. S. Circuit Judge.

Return and Answer.

(15) Filed Feb'y 4th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA. IN EQUITY.

Wilson Distilling Company, Complainant,
vs.
W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, Defendants.

To the Honorable Judges of the Circuit Court of the United States for the District of South Carolina:

The defendants to the above Bill of Complaint for answer and return to the rule herein show:

1. That they have no information upon which to base an affirmation or denial of the allegations of the first paragraph of the petition, and, therefore, demand strict proof of the same.

2. That they admit the second paragraph.

3. That they admit that the plaintiff claims more than two thousand dollars to be due it from the State of South Carolina.

4. They admit the allegations of the fourth paragraph of the petition.

5. They admit the allegations of the fifth paragraph of the petition.

6. They admit the allegations of the sixth pargraph of the petition.

7. That they have not sufficient information upon which to admit the seventh paragraph, and, therefore, they deny the same and demand strict proof thereof.

8. They deny the allegations of the eighth paragraph of the complaint and allege that a part of the account has already been taken off by discount. And they deny on information and belief that there is the amount still due which is alleged in the eighth paragraph of the complain*ant*.

9. They admit that they have closed out, as in law they (16) were required to do, the entire stock of the State Dispensary, and that they have collected and have on hand more than sufficient money to satisfy the claims of creditors, and they admit that in an answer filed in the case of Garrett & Company against these defendants in this court, that they alleged that there was not enough money on hand to pay creditors, but they deny that this is true at the present time as they have since collected enough money to enable them to pay all creditors in full as listed with them, and that they intend to pay every creditor every dollar that is honestly due. They deny that they have approved and allowed any irregular or illegal claims, or any claims for excessive amounts, and they deny that it is any concern of the plaintiffs what amounts are allowed the other creditors so long as complainants are protected and paid every cent that is due, and they allege that this will be done, but they do allege that the complainant's account is illegal in that it failed in various particulars to comply with the law in making its sales to the State Dispensary, in that it failed to give a proper bond or to furnish a chemical analysis for the goods, and as defendants are informed and believe, it did not furnish a proper bid upon which to base a purchase, and they are informed and believe, also that in a long course of dealing, it grossly and corruptly over-charged the State by collusion with the officials in charge of the State Dispensary, and that on a full accounting of all dealings leading up to the account in question, the State Dispensary will owe the plaintiff nothing as defendants are informed and believe. This information, however, may be incorrect, and the Commission which is defendant here, does not hereby adjudge the same to be facts, but states them as the reason why the claim has not as yet been paid, and sets forth that it is a judicial body, has determined to hear the question as to the amount due on said claims as well as all

other claims, and has set the 18th day of January, 1908, for hearing of the same, it having as a court made up a calender hereto attached as Exhibit "A" in which a day has been assigned for hearing as to each claim not already adjudicated, at which hearing the plaintiff will be entitled to establish its claim by competent proof and when established, and adjudged to be (17) correct, it will be promptly paid.

10. The defendants deny each and every allegation contained in the tenth paragraph of the petition.

11. The defendants allege that the law creating this Commission does impose upon the defendants the duty to pay (*the amounts justly due on the said plaintiff's claim*) and that so soon as such amount is properly adjusted, the said Commission will proceed to make such payment promptly.

12. The Commission denies that any demand has been made upon it for this claim, but alleges that the claim is being dealt with as all other claims, and that it will be paid if found to be correct.

13. The defendants deny every allegation contained in the thirteenth paragraph of the complaint.

14. The defendants deny that the verifications of the bill herein as made is sufficient.

15. The defendants allege that a very large majority of the creditors herein are opposed to the present suit, and they further allege that the said suit will be detrimental to the claims of all the parties holding claims against the State Dispensary, and they submit an affidavit of a majority of the creditors on this subject.

16. The defendants show that this court is without jurisdiction in the premises, it being a suit not only against them as a Commission representing solely the interests of the State of South Carolina and acting of and for the State of South Carolina, and they have no personal interest in the said fund in any way but only as agents and *officer* of the State, and they in addition are acting as a court and this court is without jurisdiction to control or restrain their action as a court no*t* has it jurisdiction to interfere with them in their action as officers of

the State of South Carolina, committing no trespass and threatening the disturbance of no right of the plaintiff, and acting only as the State of South Carolina.

Wherefore they demand that the complaint be dismissed with costs.

J. FRASER LYON, Atty. Gen.
STEVENSON & MATHESON,
Of Counsel.

STEVENSON & MATHESON,
Dfts. Attys.

UNITED STATES OF AMERICA, DISTRICT OF SOUTH CAROLINA.

(18)
Wilson Distilling Company
vs.
W. J. Murray et al.

Personally comes W. J. Murray, the Chairman of the Commission, known as the State Dispensary Commission, who, on oath, says that the allegations of the foregoing answer and return are true of his own knowledge, except as to matters alleged on information and belief, and as to those matters he believes them to be true.

W. J. MURRAY.

Sworn to before me January 3, 1908.

THOS. W. COLLINS,
[L. S.] Notary Public, S. C.

Ex. A.

(19) DOCKET OF STATE DISPENSARY COMMISSION.

Jan.	1,	Fleischmann & Co., Gerson Seligman.
		Ullman & Co.
		Anchor Distilling Co.
Jan.	15,	Anheuser Busch Co.
		H. D. Thierman & Jno. T. Barbie.
"	16,	Joseph Schlitz Brewing Co.
"	17,	Wm. Lanahan & Son.
"	18,	Clark Bros. & Co.
		Arthur Lehman & Co.
		Wilson Distilling Co.
"	20,	The King Co. (J. W. Kelley & Co.)
		Acme Brewing Co.
"	21,	H. & H. W. Catherwood.
		Jack Cranston Co.
"	22,	New York and Kentucky Distilling Co.
		Bellroy Distilling Co.
"	25,	The Paul Jones Co.
		Green River Distilling Co.
"	27,	The Big Springs Distilling Co.
		Richards & Co.
"	28,	Rosenegk Brewing Co.
		Strauss Pritz Co.
"	29,	Garrett & Co.
		Belair Distilling Co.
"	30,	J. E. Pepper Distilling Co.
		The Live Oak Distilling Co.
"	31,	Joseph A. Magnus & Co.
		Moyse Bros.
Feb.	1,	D. Sach & Co.
"	4,	W. W. Johnson & Co.
		Gallagher & Burton.
"	5,	H. Rosenthal & Sons.
"	6,	Big Four Distilling Co.
"	7,	Old Seventy-Six Distilling Co.
		Geo. A. Dickel & Co.
"	8,	J. F. Beckman & Co.
"	10,	Frank G. Tullidge & Co.
		Augusta Brewing Co.
"	11,	Darley Park Brewing Co.
"	12,	Savannah Brewing Co.

The cases will be called on the dates assigned and pro-
(20) ceeded with if reached, and if not reached, will be called

in their order on the Docket. The parties will be notified in due time if their cases can be reached before the date set.

W. F. STEVENSON, Attorney
State Dispensary Commission.

Ex. B.

Wilson Distilling Company
vs.
W. J. Murray et al.

(21) Personally comes J. L. Thorpe, who, on oath, says he has been in charge of the records of the State Dispensary of South Carolina as Chief Clerk of the State Dispensary Commission since the appointment of said Commission, and that he has made diligent search for a bond of Wilson Distilling Company to comply with the award made it at the September bids in 1906, at which the award was made out of which its bill grew, and no such bond is to be found among the records. Further that no bid was filed on which such award was made or shown by the bid book, the last bid filed being for the June, 1906, meeting.

J. L. THORPE.

Sworn to before me January 3, 1908.

THOS. W. COLLINS,
Notary Public, S. C.

Order Making New Parties Complainant.

(22) Filed Feb. 17, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT. IN EQUITY.

Wilson Distilling Company
vs.
W. J. Murray et al.

Anheuser-Busch Brewing Company, a corporation duly created, organized and existing under and by virtue of the laws of the State of Missouri, and a citizen of said State, and Charles J. Gallagher and Edward Burton, co-partners as Gallagher & Burton, both of whom are citizens and residents of the State

of Pennsylvania, appearing through their counsel, B. A. Hagood and Frank Carter, and seeking to be made parties complainants hereto, and intervening for that purpose.

It is ordered that the above named parties be and they are hereby permitted to intervene herein and that they be and are hereby made parties complainants herein.

This the 29th day of January, 1908.

J. C. PRITCHARD,
U. S. Circuit Judge.

Bill of Complaint.

(23) Filed Jan. 23, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT, AT COLUMBIA.

The Fleishmann Company, Complainant,
vs.
W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, constituting the State Dispensary Commission of South Carolina, and W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, individually, Defendants.
} In Equity.

To the Honorable Judges of the Circuit Court of the United States for the District of South Carolina:

The Feishmann Company, a corporation organized and existing under and by virtue of the laws of the State of Ohio, and a citizen of said State, brings this, its bill against W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, constituting the State Dispensary Commission of the State of South Carolina, and said defendants individually, all of whom are citizens and residents of said State of South Carolina, and, thereupon, your orator complains and says:

I.

That your orator, The Fleishmann Company, was, at all times hereinafter mentioned, and still is, a corporation, duly created, organized and existing, under and by virtue of the laws

of the State of Ohio, and is a citizen and resident thereof, having its principal office in the city of Cincinnati, in said State, and that the defendant, W. J. Murray, is a citizen and resi-
(24) dent of the State of South Carolina, residing at Columbia, in said State; the defendant John McSween, is a citizen and resident of said State of South Carolina, residing at Timmonsville, in said State; the defendant, B. F. Arthur, is a citizen and a resident of the State of South Carolina, residing at Union, in said State; that the defendant, C. K. Henderson, is a citizen and resident of the State of South Carolina, residing at Aiken, in said State; and the defendant, Avery Patton is a citizen and resident of the State of South Carolina, residing at Greenville in said State.

II.

And your orator further shows that many years prior to the passage of the act hereinafter mentioned, there was duly created and established by law, in the State of South Carolina, an institution for the purpose of buying, selling and distributing alcoholic liquors within said State, known as the State Dispensary, and that by the terms of the law creating and establishing said Dispensary, the managing agents or officers thereof were duly authorized, directed and empowered to purchase in its name and on its behalf, all kinds of spirituous, vinous and malt liquors, and to pledge the credit of the said State Dispensary for the payment of the same.

III.

And your orator further shows that the General Assembly of the State of South Carolina, at its session held in the year 1907, for the purpose of discontinuing said State Dispensary, disposing of its assets and paying off its creditors, passed an act entitled "An Act to Provide for the Disposition of all Property Connected with the State Dispensary and to Wind up its Affairs," which said act is in words and figures as follows:

"Session Laws, S. C., 1907.

"No. 402.

"An Act to provide for the disposition of all property con-
(25) nected with the State Dispensary, and to wind up its affairs.

"Sec. 1. Be it enacted by the General Assembly of the State of South Carolina that immediately upon the approval of

this act, the Governor shall appoint a Commission of well known business men, consisting of five members, none of whom shall be members of the General Assembly, to be known as the State Dispensary Commission, who shall each give bond for the faithful performance of the duties required, in the sum of $10,000.

"Sec. 2. Said Commission shall immediately organize by the election of a Chairman and a Secretary from their number.

"Sec. 3. It shall be the duty of said Commission to close out the entire business and property of the State Dispensary, except real estate, and including stock in the several County Dispensaries by disposing of all goods and property connected therewith, by collecting all debts due and by paying from the proceeds thereof all just liabilities at the earliest date practicable. Said Commission shall be at liberty to make such disposition upon such terms, times and conditions as their judgment may dictate: *Provided*, that no alcoholic liquors or beers shall be disposed of within the State except to County Dispensary Boards, and all liquors illegally bought by the present management may be returned to the persons, firms or corporations, from whom purchased, and for determining the legality of said purchases, they are hereby authorized and directed to investigate fully the circumstances surrounding all contracts for liquors, and to employ such assistant counsel as may be approved by the Attorney General, and such expert accountants and stenographers, and any other person or persons the Commission may deem necessary for the ascertainment of any fact or facts con-
(26) nected with said State Dispensary and its management or control at any time in the past, and to take testimony, either within or without the State; *Provided, further*, that all payments shall be made in gold and silver coin of the United States, in United States Currency or in national bank notes.

"Sec. 4. The compensation of each member of said Commission shall be $5.00 per day for each day actually employed about the business and actual expenses for the time engaged. *Provided*, that they shall receive no compensation for services rendered on this Commission after January 1st, 1908.

"Sec. 5. The said Commission shall pay to the State Treasurer, after deducting their compensation and other expenses allowed by this Act, all surplus funds on hand after paying all liabilities.

"Sec. 6. The said Commission is hereby authorized to employ such bookkeepers, accountants, clerks, assistants and

employes as they may deem necessary, and to contract with them at the time of employment for their compensation.

"Sec. 7. The said Commission shall submit to the Governor at the earliest day practicable, a complete inventory of all property received by them, with a statement of the liabilities of the State Dispensary, and, as soon as the affairs are liquidated, a report in full of their actings and doings.

"Sec. 8. That said Commission shall have full power and authority to investigate the past conduct of the affairs of the Dispensary, and all the power and authority conferred upon the Committee Appointed to Investigate the Affairs of the Dispensary,as prescribed by an Act to Provide for the Investigation (27) of the Dispensary, approved January 24th, A. D., 1906, be and hereby is, conferred upon the Commission provided for under this Act; provided, that for purpose of the investigation of the affairs of the Dispensary as herein provided, each and every members of said Commission be and hereby is, authroized and empowered, separately and individually, or collectively, to exercise the power and authority herein conferred upon the whole Commission.

"Approved, the 16th day of February, A. D., 1907."

IV.

That the said Act was duly approved on the 16th day of February, 1907, and within a short time thereafter the Commission therein provided for was created by the appointment of the defendants, as Commissioners, and said defendants, having duly qualified and organized pursuant to said Act, became, and do now constitute, the State Dispensary Commission, and as such are charged with the execution of all the powers conferred and the performance of all the duties imposed upon said Commission by the said Act.

V.

That, immediately upon their qualification and organization as hereinbefore alleged, the defendants entered upon the discharge of said duties, and in accordance with the directions contained in said Act, took possession and control of the entire business and property of the State Dispensary, and have, as your orator is informed and believes, sold said property and collected the debts due to said State Dispensary and the proceeds arising from said sale and collection are, or ought to be, in the

hands of said defendants, applicable to the payment of the liabilities of said State Dispensary, and to the other uses and purposes designated in said Act.

VI.

And your orator further shows that, prior to the passage of the said Act of 1907, providing for a sale of the property of the (28) said State Dispensary and the winding up of its affairs, and while the said State Dispensary was still engaged in business, your orator sold and delivered to it at prices which were entirely reasonable and mutually satisfactory, a large quantity of valuable whiskies and other spirituous liquors, all of which whiskies and liquors were received and accepted by said State Dispensary, and had been, except as hereinafter alleged, sold or disposed of by it at a substantial profit; that the sales so made by your orator were, in every respect, regular and legal and were made upon orders properly and lawfully given by the persons duly authorized to give such orders; and the whiskies were delivered to said State Dispensary under a contract, promise and agreement that your orator should be paid the prices charged therefor, and the said State Dispensary became and was at the time of the passage of said Act, and at the time the defendants took charge of said business and property, and still is, justly indebted to your orator for the same.

VII.

That, within a short time after the appointment and qualification of the defendants and their organization as the State Dispensary Commission, your orator being desirous of having its account against the State Dispensary settled, and in order that all differences might be reconciled, or disputes, if any, adjusted, and the amount due to your orator fixed and determined, filed with said defendants an itemized statement of its account and requested the defendants to have the same audited so that it could be passed upon; that, thereafter, the defendants notified your orator that there was still on hand and undisposed of a portion of the whiskey which your orator had sold to the said State Dispensary and asked your orator to take back said whiskey and allow a credit therefor, then and there holding out as an inducement to your orator for so doing, that if they were permitted to return said goods, it would greatly facilitate a settlement with your orator and enable them to make a much earlier payment of the account, and your orator, being anxious to remove every possible cause of delay in obtaining a settlement

(29) of its claim, did take back all of said goods and give credit therefor at the invoice price thereof.

VIII.

That, on or about the 24th day of May, 1907, the defendants advised your orator that, in comparing its account with the books kept by the State Dispensary, they had discovered a discrepancy between the amount claimed by your orator and the amount shown by said books to be due, of $292.14, growing out of certain credits to which the said State Dispensary was entitled, and which your orator had failed to allow, but that, in every other particular, your orator's account was, according to the audit made by the defendants, correct, and corresponded with the said books, and that if your orator would allow said credit there would be no further dispute as to the amount due to your orator, and your orator being still anxious to get its account adjusted and receive payment of the same, did consent that said sum might be deducted, and, thereupon, it was agreed between your orator and the defendants, that there was, on the date above mentioned, a balance of $66,501.19 justly due and owing to your orator by the said State Dispensary, which said sum the defendants then and there agreed to pay, but, notwithstanding your orator has made frequent demands on them, they have refused and still refuse to pay the same.

IX.

And your orator further shows that, as it is informed and believes, the defendants have received from the sale of the property of the State Dispensary and the collection of debts due it, and now have in their hands a large sum of money, amounting to upwards of $800,000.00, and that this sum, if properly preserved and applied, will be amply sufficient to pay off and discharge the claim of your orator and all other just liabilities of said State Dispensary, which said liabilities do not, as your orator is informed and believes, exceed the sum of $609,000.00, all of which facts will more fully appear from the report made (30) by the defendants to the Governor of the State of South Carolina, on or about the 4th day of January, 1908, to which report reference is hereby made for the ascertainment of said amounts.

X.

That, as your orator is advised and believes, the money received by the defendants and held by them as hereinbefore alleged, having been placed in their possession for the specific

purpose of paying all the just liabilities of the State Dispensary, became and now constitutes a trust fund in the hands of said defendants, and the said defendants hold the same as trustees for your orator and the other creditors of the said State Dispensary, and the amount due your orator having been determined and agreed upon, your orator is entitled to have said amount immediately paid to it out of said fund.

XI.

And your orator further shows that said defendants are abusing the trusts reposed in them by wrongfully and unlawfully failing and refusing to carry out the terms and provisions of said Act of 1907 of the General Assembly of the State of South Carolina and that the greater part of the money which the defendants have received, as aforesaid, has been on deposit for many months, and is now on deposit in certain banks in the State of South Carolina, in which banks the said defendants, or some of them, are respectively interested, either as officers, stockholders or directors; that a large sum of said money is now in the National Loan & Exchange Bank of Columbia, in which bank the defendant Murray, who is the Chairman of the Dispensary Commission, is a large stockholder and a director; that another large portion of said money is deposited in the Bank of Timmonsville, in which said bank the defendant McSween is a stockholder and a director, and is also its president; that another large portion of said money is on deposit in the People's Bank of Union, in which bank the defendants Arthur is a stockholder and a director, and also its president; that another large (31) portion of said money is on deposit in the Bank of Aiken, in which bank the defendant Henderson is a stockholder and director; that another portion of said money is deposited in the Piedmont Savings & Investment Co. of Greenville, in which the defendant Patton is a stockholder and director, and a portion of said money is deposited in the Merchants & Farmers Bank of Cheraw, in which bank one W. F. Stevenson, who resides in the said town of Cheraw, and who is the attorney for the defendants constituting the State Dispensary Commission, is a stockholder and director, and also its president.

That the said defendants have wrongfully, unlawfully and fraudulently declined and refused to make distribution of the said money among the creditors of said State Dispensary or to pay the claim of your orator, or any of the other of said creditors, for the reason, as your orator verily believes and alleges the fact to be, that there has been formed and now exists an unlawful understanding or agreement between the defendants, by which it has been decided that the money deposited in the

banks above named shall be held and allowed to remain as long as possible in said banks and be used by them for their own benefit and profit.

XII.

And your orator further shows that there are a large number of persons claiming to be creditors of the said State Dispensary and seeking to collect from the defendants various sums ranging in amount from one to many thousand dollars; that some of said persons, for the purpose of compelling the payment of their debts, have already brought suit against said defendants, and others are, as your orator is informed and believes, threatening to institute similar actions; and if the defendants shall be required or permitted to defend a multiplicity of such suits in order to determine the validity of each claim against them, and shall be allowed, as they have declared their intention to do, to defer the payment of all claims until the final termination of said suits, a large part of the funds in their hands will be wasted in expensive litigation and court costs, and a great wrong, injury and injustice will be done to your (32) orator and the other creditors whose claims are admitted to be just and correct, and about which there is and can be no dispute.

XIII.

And your orator further shows that, although the said defendants have in their hands the large sum of money hereinbefore mentioned, and although they are wrongfully and unlawfully retaining said money for the use and benefit of institutions in which they are personally interested, and are wrongfully and unlawfully refusing to carry out and perform the duties and trusts imposed upon them by the General Assembly of the State of South Carolina, the said defendants have only given bonds in the sum of $10,000.00 each, and they are now, as your orator is informed and believes, threatening to take measures to have an act passed by the General Assembly of South Carolina terminating their Commission and providing for a transfer of the money in their hands to the State Treasurer, which money ought to be applied to the payment of the debts due to your orator and the other creditors of the said State Dispensary, and thus, if possible, place the same beyond the reach, or by some other means, impair the contract rights of your orator and said other creditors, and, as your orator is advised and believes, unless the defendants are restrained and enjoined from exercising any control over or in any way interfering further with said fund, the said defendants will waste

or wrongfully divert the same to the great and irreparable damage of your orator and all the other creditors of the State Dispensary.

XIV.

And your orator further shows, upon information and belief, that there is a very wide difference between the opinions of the defendants as to the duties required of them as members of the Dispensary Commission, and the proper manner of performing said duties; that the defendant B. F. Arthur, although still a member of said Commission has declined and refused to take any further part in the proceedings thereof, and has not, (33) for at least eight months, attended any of the meetings of said Commission, or participated in any of its deliberations; that the other four defendants as members of said Commission are about equally divided as to what course ought to be pursued with reference to the ascertainment of the just liabilities of the State Dispensary and the payment of the same, and that, by reason of such division, the said defendants have become engaged in a dispute among themselves, which renders it almost impossible for them ever to agree upon any plan by which to carry out the provisions of the Act of 1907 of the General Assembly of South Carolina and to execute the trust imposed upon them by said Act, and, as your orator is advised and believes, unless this Honorable Court shall take charge of the trust fund now in the hands of the defendants as members of said Commission, and administer the same in accordance with the provisions of the said Act of 1907, your orator and the other creditors of said State Dispensary, will, to their great and irreparable damage, be indefinitely delayed in the collection of their claims.

XV.

And your orator further shows, upon information and belief, that the defendants now allege and pretend that there were certain irregularities and fraud in connection with some of the sales of liquors made to the former officers of the State Dispensary, and the defendants have entered into an unlawful combination or conspiracy with one J. Fraser Lyon, the present Attorney General of the State of South Carolina, and under whose advice said defendants are acting, to aid the said Lyon in carrying out his frequent threats to prosecute and imprison said officers, and to that end, have agreed among themselves and with said Lyon to withhold the payment of the claim of your orator and all other creditors, until the said Lyon has obtained such evidence as may be sufficient to prove the guilt and se-

cure the conviction of said officers; that under and pursuant to this agreement, combination or conspiracy the defendants have refused and are still refusing to carry out the provisions of the Act of 1907, and to pay the claim of your orator and the other just liabilities of said State Dispensary, although the account of your orator has been duly audited, the amount claimed admitted to be justly due and payable, as hereinbefore alleged, and notwithstanding the fact that the defendants have never made any pretense or claim that either of the sales made by your orator was, in any respect, irregular, illegal or fraudulent, and notwithstanding the frequent promises and agreements by the defendants to pay the amount so admitted to be due.
(34)

XVI.

And your orator further shows that, notwithstanding the fact that the amount claimed by your orator has been admitted by the defendants to be a just liability against the said State Dispensary, and now due and payable out of the fund in their hands and although the said defendants have never claimed or pretended that said amount was subject to any off-sets, credits or counter claims, your orator is ready, able and willing, if this honorable court shall direct that the amount due to it be immediately paid, to execute and deliver to the said defendants a good and sufficient bond in such sum as may be required by this honorable court, to the full amount of its claim, if necessary, conditioned to pay to the said defendants all such amounts as may be, upon the hearing of this cause, found and adjudged to be due by your orator to these defendants by way of off-set, reduction, credit, counter-claim or otherwise.

In consideration whereof, and for as much as your orator is without remedy and can obtain adequate relief only in a court of equity, and to the end that the defendants may be prevented from committing further wrongs and trespasses against the rights of your orator, and for the purpose of preserving the funds in the hands of the defendants and of enforcing the rights and equities of your orator in and to the same, and preventing further waste, loss and damage, by reason of the facts alleged in this bill, your orator prays:

(1) That this Honorable Court will either forthwith appoint a receiver to take charge of and administer as a trust
(35) fund all the money now in the hands of the defendants arising out of the sale of property belonging to the State Dispensary of South Carolina or from the collection of debts due it; or direct and decree that the amount admitted to be due to your orator be immediately paid to it upon the execution by

your orator of a good and sufficient bond to be approved by the court and conditioned to pay to the defendants all such sum or sums as may be found to be due them by your orator and adjudged to be paid by it.

(2) That the defendants, their agents, servants, attorneys and employes be restrained and enjoined from disposing of or paying out, or in any manner interfering further with said fund or any part thereof, except to transfer the same to the receiver appointed by the court, or to pay the amount due to your orator as the court may direct.

(3) That it be referred to a master to ascertain and determine the amount due to your orator for goods sold and delivered by it to the said State Dispensary, and that a decree be entered ordering and directing that the amount so found to be due be immediately paid to your orator. That the defendants be required to set forth an account of all and every sum or sums of money received by them, or either of them, or which ought to have been received by them, or which has been received by any person or persons, by their or either of their orders, or for their or either of their use, from the sale of any property of the said State Dispensary or the collection of and debt or debts due to it, and when and from whom, and from what in particular, all and every such sums were respectively received, and how the same respectively have been applied or disposed of.

And that your orator have such other and further relief in the premises, as the nature of the circumstances of this case may require, and as to the court may seem meet and proper;

And, may it please your Honors to grant unto your orator a writ of injunction, conformable to the prayer of this bill, and also a writ of subpœna directed to the said defendants, (36) commanding them, and each of them, to appear and answer this bill of complaint, but not under oath, answer under oath being hereby expressly waived, and to stand to, perform and abide by such orders, directions and decrees in the premises as to the court shall seem meet or be required by the principles of equity and good conscience.

(Signed) THE FLEISHMANN CO.
By CASPER H. ROWE.

MERRICK & BARNARD,
GEO. B. LESTER,
Solicitors for Complainant.

STATE OF NORTH CAROLINA,
County of Buncombe.

(37) On this the 20th day of January, 1908, before me personally appeared Casper H. Rowe, who, being first duly sworn, says: That he is an officer of the complainant corporation, The Fleishmann Company, to-wit, its treasurer, and makes this affidavit in its behalf; that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters, he believes it to be true.

(Signed) CASPER H. ROWE.

Sworn to and subscribed before me, this the 20th day of January, 1908.

(Signed) PHILIP R. MOALE,
Notary Public.

My commission expires September 11, 1909.

Sub. Ad Re.

(38) Filed 23rd January, 1908.

UNITED STATES OF AMERICA,
Fourth Circuit,
District of South Carolina.

The President of the United States of America to W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, constituting the State Dispensary Commission of South Carolina, and W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, individually, and The National Loan and Exchange Bank, The Palmetto National Bank, The Columbia Savings and Trust Company, all of Columbia, South Carolina, The Bank of Timmonsville, of Timmonsville, South Carolina, The People's Bank of Union, South Carolina, The Bank of Aiken, South Carolina, The Piedmont Savings and Investment Company, of Greenville, South Carolina, The Merchants and Farmers Bank of Cheraw, South Carolina, and The Bank of Camden, South Carolina.

You are hereby strictly commanded and firmly enjoined that all manner of excuses being laid aside you be and appear before the Judges of the Circuit Court of the United States for the District of South Carolina, at Charleston, on the Rules

day of March, 1908, twenty days after the service thereof; then and there true and perfect answer to make, upon your corporal oath on the Holy Evangelists, to all such matters as shall be objected against you in the bill of complaint of The Fleischmann Company.

And also, that you do, on the rules day next immediately after the day appointed and expressed, file, or cause to be filed, in the Registry of said court, your plea, answer or demurrer, to the said bill of complaint.

Herein fail not, under the pain of one hundred pounds.

Given under the seal of said court.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States of America at Charleston, in South (39) Carolina District, aforesaid, the 23d day of January, in the year of our Lord one thousand nine hundred and eight, and in the one hundred and thirty-second year of the Sovereignty and Independence of the United States of America.

MERRICK & BARNARD,
GEO. B. LESTER,
Complainant's Solicitor.

Memorandum.

The defendants will take notice that they are required to enter their appearance in this suit, in the Clerk's Office of the Circuit Court of the United States for the District of South Carolina, on or before the first Monday of March, 1908, otherwise the bill will be taken *pro confesso* against them.

[Seal]

C. J. MURPHY,
C. C. C. U. S., Dist. of S. C.

Order to Show Cause.

Filed Jan. 23, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT, AT COLUMBIA.

The Fleishmann Company, Complainant,
vs.
W. J. Murray and others, Defendants.

(40)

Upon considering the bill of complaint filed in this cause, it is now, on motion of the solicitors for the complainant, or-

dered and adjudged that the defendants be and appear before the undersigned Judge, at his Chambers, in Asheville, North Carolina, at 10 o'clock a. m., on the 29th day of January, 1908, and show cause, if any they have, why the relief prayed for in said bill shall not be granted, and why a receiver shall not be appointed by this court to take charge of and administer all of the funds now in the hands of the said defendants, arising from the sale of property belonging to the State Dispensary, or from the collection of any debts due to it.

Let a copy of this order, together with a copy of the bill, be served forthwith upon each of the defendants.

This the 21st day of January, 1908.

(Signed) J. C. PRITCHARD,
United States Circuit Judge.

Affidavit of George B. Lester.

(41) Filed Jan. 23, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT, AT COLUMBIA.

The Fleishmann Company, Complainant, *vs.* W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, constituting the State Dispensary Commission of South Carolina, and W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, individually, Defendants.	In Equity.

Affidavit of George B. Lester.

George B. Lester, being first duly sworn, says:

That he is general counsel for the complainant above named, and also a member of a special committee appointed by certain creditors of the South Carolina State Dispensary, for the purpose of obtaining an adjustment and settlement of their claims against the defendants; that as such general counsel for the complainant and member of said committee, affiant has spent much time in the city of Columbia, where the defendants, constituting the Dispensary Commission, hold their sessions;

that during affiant's visits to Columbia, he has had frequent conversations with numerous persons, business men and citizens of Columbia, who are familiar with the affairs of the State Dispensary and well acquainted with the defendants, or some of them; that in a large number of these conversations, affiant was informed, and it was the prevailing opinion among those acquainted with Dispensary matters, that the next session of the General Assembly of the State of South Carolina would take some steps or would pass some act looking to an abolition of the Dispensary Commission and the disposition of the funds (42) in the hands of the defendants. Affiant was also informed by one of the officials connected with the defendants constituting the State Dispensary Commission that legislation would be asked for in the form of a bill providing for the abolition of the Dispensary Commission and the establishment of a Court of Claims to pass upon and determine the amounts due to the various creditors of the State Dispensary, and for a transfer of the funds now in the hands of the Commission to the State Treasurer.

Affiant further states that the General Assembly of the State of South Carolina is now in session, and that, from information which has come to affiant's knowledge since the filing of the bill and the issuing of the order to show cause in this suit, he has reason to believe and does verily believe that some attempt will be made to have the said General Assembly pass some bill, the object of which is to remove the funds now in the hands of the defendants beyond the jurisdiction of this court, and that, on January 21st, 1908, there appeared an article in "The State," a newspaper of wide circulation and influence in the city of Columbia, in which article it was suggested that such action could be easily taken; that the defendants and their counsel are contending that the money now in the hands of the defendants constituting the Dispensary Commission is a State fund, and, as such, the present General Assembly has entire control over the same, and that any suit brought by any creditor of the State Dispensary, seeking to enforce any claim against said fund is a suit against the State; and affiant verily believes and alleges the fact to be, that it is the object and purpose of the defendants to avoid, if possible, the payment of the claim of the complainant, and all other creditors, and that, in view of the application which has been made to the court for the appointment of a receiver to take charge of said fund, it is the purpose of the said defendants, or their attorneys, or representatives, to thwart the action of the plaintiff by taking some immediate steps to put this money beyond the reach of this court and thus deprive the complainant of any relief in this suit.

Affiant further states, on information and belief, that, in addition to the amounts deposited in the banks mentioned in (43) complainant's bill of complaint, to-wit, the National Loan & Exchange Bank of Columbia, The Bank of Timmonsville, The People's Bank of Union, The Bank of Aiken, The Piedmont Savings & Investment Company of Greenville, The Merchants & Farmers Bank of Cheraw, some portion of said funds is held by the Palmetto National Bank of Columbia, The Columbia Savings Bank & Trust Company and The Bank of Camden.

And affiant further shows that, under the former order to show cause entered in this case, complainant has no protection against a dissipation or a diversion of the funds in the hands of the defendants, or in the depositaies above named, other than a writ of injunction heretofore granted by this court in the case of Wilson Distilling Company against said defendants, in which case the complainant in this case has no interest or right to be heard, and if the said injunction should be, either by consent of parties, or otherwise, dissolved, said defendants, as affiant verily believes, would at once take steps to place the funds under their control beyond the reach of this court, either by securing an act of the legislature, as above suggested, or by some other means, and, as affiant is advised and believes, for the reasons set forth in this affidavit and the complainant's bill, the complainant is entitled to and ought to be allowed an order restraining said defendants and the depositaries in which said defendants have placed the funds under their control, from in any way paying out any of said funds, removing same beyond the jurisdiction of this court, or taking any action tending to or which might prevent the complainant from obtaining the full relief to which it is entitled in this cause.

Wherefore, affiant prays that the depositaries above named be made parties to this cause and the order heretofore made, be so amended as to restrain and enjoin said defendants and said depositaries from interfering with, paying out, transferring, or in any wise changing the present status of said funds, until the further orders of this court.

(Signed) GEO. B. LESTER.

Sworn to and subscribed before me, this 22d day of January, 1908.

(Signed) W. SCOTT RADEKER,
Notary Public.
(My commission expires November 14, 1909.)

Restraining Order.

(44) Filed Jan. 23, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT, AT COLUMBIA.

The Fleishmann Company, Complainant,
vs.
W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, constituting the State Dispensary Commission of South Carolina, and W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, individually, Defendants.
} In Equity.

It having been made to appear to the court, since the signing of the order to show cause, heretofore granted in this case, that there is reasonable ground to apprehend that the defendants may, before the return day of said order, make some attempt to place the funds now in their hands and for which a receiver has been asked, beyond the jurisdiction of this court, and that it is necessary, in order to secure the complainant's rights, that said funds shall remain in *statu quo;*

It is now, on motion of solicitors for the complainant, ordered and adjudged, that the defendants and each of them, their agents, servants, attorneys and employes, and the following named depositaries, to-wit: The National Loan & Exchange Bank, The Palmetto National Bank, The Columbia Savings & Trust Company, all of Columbia, South Carolina, The Bank of Timmonsville, of Timmonsville, South Carolina, The People's Bank of Union, South Carolina, The Bank of Aiken, South Carolina, The Piedmont Savings & Investment Company, of Greenville, South Carolina, The Merchants & Farmers Bank of Cheraw, South Carolina, and the Bank of Camden, South Carolina, be and they are hereby made parties defendant to this cause and that they and all other banks or depositaries, if any, in which (45) said funds, or any part thereof, is now deposited, their officers, agents, servants, attorneys, and employes, be, and they are, each hereby restrained and enjoined from interfering with, paying out or transferring to any person or persons whomsoever, or in any way disturbing or changing the present status of said funds, or any part thereof, and from taking any steps with reference to the said funds tending to, or which may put said

funds beyond the jurisdiction of this court until the further orders of this court.

This January 22d, 1908.

(Signed) J. C. PRITCHARD,
U. S. Circuit Judge.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of So. Ca. } *ss:*

(46) I hereby certify and return that I served the annexed bill of complaint, affidavit & orders on the therein-named W. J. Murray, by handing to and leaving a true and correct copy thereof with him personally at Columbia, S. C., in said district on the 23 day of Jany., A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By CHARLES T. SENN, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of So. Ca. } *ss:*

(47) I hereby certify and return that I served the annexed subpœna ad re on the therein-named W. J. Murray by handing to and leaving a true and correct copy thereof with him personally at Columbia, S. C., in said district, on the 25 day of January, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By CHARLES T. SENN, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of So. Ca. } *ss:*

(48) I hereby certify and return that I served the annexed bill in equity, two orders & sub. ad. re on the therein-named John McSween by handing to and leaving a true and correct

copy thereof with him personally at Timmonsville, in said district, on the 27th day of January, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By CHARLES T. SENN, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(49) I hereby certify and return that I served the annexed order on the therein-named B. F. Arthur by handing to and leaving a true and correct copy thereof with him personally at Union, in said district, on the 25 day of Jany., A. D., 1908.

_____,
U. S. Marshal.
By V. P. CLAYTON, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(50) I hereby certify and return that I served the annexed complaint, orders & sub. ad re on the therein-named C. K. Henderson by handing to and leaving a true and correct copy thereof with F. P. Henderson, a son of the said C. K. Henderson, & who had charge of his business, personally at Aiken, in said district, on the 27 day of Jany., A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By M. W. HUDGENS, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(51) I hereby certify and return that I served the annexed complaint, orders & sub. ad re on the therein-named Avery Pat-

ton by handing to and leaving a true and correct copy thereof with him personally at Greenville, in said district, on the 25 day of January, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By REBEN GOSNELL, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of So. Ca. } *ss:*

(52) I hereby certify and return that I served the annexed subpœna ad re on the therein-named G. M. Berry, cashier National Loan & Exchange Bank by handing to and leaving a true and correct copy thereof with him personally at Columbia, S. C., in said district, on the 25 day of January, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By CHARLES T. SENN, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of So. Ca. } *ss:*

(53) I hereby certify and return that I served the annexed bill of complaint, affidavit, orders on the therein-named E. C. Catheart, Jr., Asst. Cashier The National Loan & E. & C. Bank, by handing to and leaving a true and correct copy thereof with him personally at Columbia, S. C., in said district, on the 23 day of January, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By CHARLES T. SENN, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of So. Ca. } *ss:*

(54) I hereby certify and return that I served the annexed bill of complaint, affidavit, orders on the therein-named Wilie

Jones, president Palmetto National Bank, by handing to and leaving a true and correct copy thereof with him personally at Columbia, S. C., in said district, on the 23 day of January, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By CHARLES T. SENN, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of So. Ca. } *ss:*

(55) I hereby certify and return that I served the annexed subpœna ad re on the therein-named Wilie Jones, president Palmetto National Bank, by handing to and leaving a true and correct copy thereof with him personally at Columbia, S. C., in said district, on the 25 day of January, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By CHARLES T. SENN, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of So. Ca. } *ss:*

(56) I hereby certify and return that I served the annexed bill of complaint, affidavit & orders on the therein-named A. R. Heyward, Jr., cashier, Savings Bank & Trust Co., by handing to and leaving a true and correct copy thereof with him personally at Columbia, S. C., in said district, on the 23 day of Jany., A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By CHARLES T. SENN, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of So. Ca. } *ss:*

(57) I hereby certify and return that I served the annexed subpœna ad re on the therein-named D. C. Heyward, president

Cola. Savings & Trust Co., by handing to and leaving a true and correct copy thereof with him personally at Columbia, S. C., in said district, on the 25 day of January, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By CHARLES T. SENN, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of So. Ca. } *ss:*

(58) I hereby certify and return that I served the annexed bill in equity, two orders and sub. ad re on the therein-named The Bank of Timmonsville by handing to and leaving a true and correct copy thereof with John McSween, president of said bank, personally at Timmonsville, in said district, on the 27 day of January, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By CHARLES T. SENN, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of ..... } *ss:*

(59) I hereby certify and return that I served the annexed ..... on the therein-named The Peoples Bank of Union, by handing to and leaving a true and correct copy thereof with B. F. Arthur, Prest., personally at Union, in said district, on the 25 day of Jany., A. D., 1908.

_____,
U. S. Marshal.
By V. P. CLAYTON, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(60) I hereby certify and return that I served the annexed complaint, orders & sub. ad re on the therein-named The Bank

of Aiken by handing to and leaving a true and correct copy thereof with William Wesley Muckenfuss, the cashier of the Bank of Aiken, personally at Aiken, S. C., in said district, on the 27 day of January, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By W. M. HUDGENS, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(61) I hereby certify and return that I served the annexed complaint, orders & sub. ad re on the therein-named The Bank of Aiken by handing to and leaving a true and correct copy thereof with Wm. Wesley Muckenfuss, the cashier of the Bank of Aiken, personally at Aiken, S. C., in said district, on the 27th day of January, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By M. W. HUDGENS, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(62) I hereby certify and return that I served the annexed complaint, orders & sub. ad re on the therein-named Piedmont Savings & Investment Co. by handing to and leaving a true and correct copy thereof with F. F. Capers, president, personally at Greenville, in said district, on the 26 day of Jany., A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By REBEN GOSNELL, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(63) I hereby certify and return that I served the annexed sub. ad re complaint & orders on the therein-named The Mer-

chants & Farmers Bank by handing to and leaving a true and correct copy thereof with T. G. Matherson, cashier of the bank, personally at Cheraw, S. C., in said district, on the 28th day of Jany., A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By P. P. MEEKINS, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of ..... } *ss:*

(64) I hereby certify and return that I served the annexed bill in equity, orders & sub. ad re on the therein-named H. G. Carrison, president The Bank of Camden, S. C., by handing to and leaving a true and correct copy thereof with his daughter, Miss Emily Carrison, at his residence personally at Camden, S. C., in said district, on the 27th day of January, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By CHARLES T. SENN, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(65) I hereby certify and return that I served the annexed bill in equity, orders & sub. ad. re. on the therein-named H. G. Carrison, president the Bank of Camden, S. C., by handing to and leaving a true and correct copy thereof with his daughter, Miss Emily Carrison, at his residence personally, at Camden, S. C., in said district, on the 27 day of January, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By CHARLES T. SENN, Deputy.

Order Modifying Order of Injunction.

(66) Filed Feby. 3rd, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA. IN EQUITY.

Fleischmann & Company, Complainants,
vs.
South Carolina Dispensary Commission et al., Defendants. } Order.

It is ordered, that the injunction heretofore granted in this case be so modified that the Commission may be authorized, pending the decision of the motion that is before the court, to proceed to pay such expenses as are necessary to be incurred in the administration of the funds and business in their hands and the protection of the rights which they have under the statute creating them, and for such purposes and none other; Provided, that the sum herein authorized to be expended shall not exceed the sum of $15,000.

The clerk will enter and certify a copy of this order to the Commission.

J. C. PRITCHARD,
Jan. 30th, 1908. U. S. Circuit Judge.

Return of Defendants.

(67) Filed January 29th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

The Fleischmann Company, Complainants,
vs.
W. J. Murray et al., constituting the State Dispensary Commission of South Carolina, and W. J. Murray, et al., individually, Defendants. } In Equity.

Come now W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson, and Avery Patton, constituting the State Dispensary Commission of South Carolina, and W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, and without submitting themselves to the jurisdiction

of this Honorable Court, but, on the contrary, insisting that it is without jurisdiction in the premises, and reserving the right to demur, plea or answer in accordance with the rules of practice and procedure which obtain in this court, and solely in response, and by way of a return to the rule to show cause granted on the 21st day of January, 1908, "why the relief prayed for in the said bill should not be granted and why a receiver should not be appointed by this court to take charge of and administer all of the funds now in the hands of said defendants arising from the sale of property belonging to the State Dispensary or from the collection of any debts due it," and for cause in this behalf these defendants say:

1.

That the said plaintiff has not by and in said bill stated such a cause as doth or ought to entitle it to any such relief as is thereby sought or prayed for from or against these defendants, or either of them.

2.

(68) That it appears from the allegations contained in the complainant's bill that the said suit is a suit, in fact and in legal effect, against the State of South Carolina and not against these defendants or either of them, except as in their official capacity they represent said State, and therefore is contrary to the provisions of the eleventh amendment to the Constitution of the United States of America.

3.

That it appears from the allegations in said bill that the said suit is a suit against the State of South Carolina for that the purpose and intention thereof is to administer the funds and moneys belonging to the State of South Carolina and in the custody of its duly authorized agents; to coerce the State of South Carolina in the payment of the alleged debt of the plaintiff; and to restrain a duly constituted court of the State in violation of section 720 of the revised statutes.

4.

These defendants deny the allegations in paragraph 2 of the bill of complaint and they aver that "The manufacture, sale, barter and exchange of intoxicating liquors was prohibited, and the State of South Carolina in the exercise of her police

power engaged in and monopolized the liquor traffic, and to that end appointed and established the State Dispensary and appropriated $50,000,00, for commencing said business.

Said Dispensary, however, had no existence or entity or credit separate and apart from the said State. It was a mere agency of the State for the conduct and operation of her business. The business belonged to the State. All purchases therefor were made by the State and upon her credit. All profits of the business and the stock on hand at the time the State Dispensary was abolished, belonged to the State.

5.

(69) Under the Act creating the State Dispensary Commission and in the exercise of the powers, rights and the duties conferred upon said Commission and these defendants by said Act, and by the Act approved January 24th, 1906, these defendants closed out the entire business and property of the State Dispensary, except real estate, and collected a large part of the debts, and thus the fund in controversy was realized.

6.

These defendants deny the averments contained in paragraph 10 of the bill of complaint and say that said funds are not trust funds, and that these defendants do not hold or control the same, as trustees, either for the complainant or other alleged creditors of the State, or for any one else. They aver that said funds are in their custody or control as officers of the State and at the will of the State, and are to be disposed of in accordance with the provisions of the Act creating the Commission, unless said Act is amended or repealed. They further aver that the said funds are the property of the State of South Carolina and are in the possession of the said State, as the control or possession of the said funds are in the defendants as the officers of the State, and their possession or control is the possession or control of the State.

7.

They further aver that they, as individuals, have no interest whatever in the litigation or in the funds in controversy, and that their sole duty and liability with respect to said funds, is to the State of South Carolina, to her General Assembly and Governor. That the claim of the plaintiff and all others for goods sold to the State Dispensary are against the State, and not

against the State Dispensary or against the State Dispensary Commission, or against these defendants, either in their official or individual capacity. Neither the State Dispensary Commission, or these defendants, as officers or individuals, sustain any relation or privity to the plaintiff, contractural or other-
(70) wise. They owe no duty to, and are under no liability to the plaintiff or to any other person holding claims of like character against the State.

8.

These defendants further say that they have exercised the powers and authority granted by the General Assembly only for the purpose of enabling them to perform their duties fairly and promptly, and they submit that they have proceeded with the work with all possible expedition and dispatch.

They requested the Attorney General and his associates to investigate and secure evidence as to the validity and justice of the various claims against the State. From time to time they impressed upon said parties their desire to complete the work as soon as possible, and repeatedly urged the necessity of prompt action. It was until within the last thirty days, however, that said parties reported that they had secured sufficient evidence, and were ready to proceed with the hearing of all said claims.

These defendants say upon information and belief that this report was made as early as practicable, as there was a large number of claims extending over a period of several years, and the evidence relative to the same was gathered from various States.

Immediately upon receipt of this report, the commission assigned 41 of said claims for a hearing, and among these was plaintiff's claim. A docket was made up, copy of which will be shown to the court, and a notice was served upon the plaintiff and upon all others whose claims had been assigned for a hearing as stated. A formal notice was served upon the plaintiff, requiring it to produce certain of its books of original entry relating to its accounts against the State.

9.

On the 14th day of January, the Commission commenced the hearing of said claims. It took up the claims of Ullman & Co. and of the Anchor Distilling Company. After hearing of evidence the Commission reached the conclusion that instead of the State being indebted to said claimant in the sum of $36,-926.78, that Ullman & Co. was indebted to the State in the sum

of $31,390.72 and thereupon they returned a judgment in favor (71) of the State against Ullman & Co. in accordance with their findings. A transcript of the evidence in said case, and the copy of the judgment of the Commission will be exhibited to the court.

10.

Plaintiff's claim was assigned for January 23rd. George B. Lester, Esq., general counsel for plaintiff was present on January 14th and claimed an agreement with Mr. Stevenson that plaintiff's case would be heard that day. Before announcing ready to proceed, the counsel for the State demanded the production of the books covered by the notice served upon the plaintiff as aforesaid, and notified Mr. Lester that they desired the presence of one Early who acted for the plaintiff in connection with sales to the State and whom they desired to examine in connection with its claim. Thereupon the said George B. Lester stated that the plaintiff would decline to produce its books or have said Early present. He challenged the jurisdiction of the Commission to enter upon a full investigation of all transactions between the plaintiff and the officials of the State Dispensary, and stated that he would appeal to the Federal Court for relief.

11.

The Commission is advised by the Attorney General and his associates that the claim of the plaintiff for goods sold by it to the State Dispensary is unjust and invalid and they have evidence to establish (a) That the plaintiff and the Gerson-Seligman Company are one and the same, as the latter is a mere trade name under which the former transacted business and was used for the purpose of avoiding the provision of the statute which prohibits any person, firm or corporation from submitting more than one bid.

(b) That there existed between the plaintiff and Gerson-Seligman Company and its agents and representatives and a majority of the said members of the Board of the South Carolina Dispensary a conspiracy to defraud and cheat the State of (72) South Carolina and in pursuance thereof, the said plaintiff by and with the aid and assistance of the said Board of Directors, or a majority thereof, did cheat and defraud said State of South Carolina by charging and collecting from said State prices for the goods sold to the State which were largely in excess of the market value thereof, which overcharges were by agreement between conspirators made and used for the purpose of corrupting and bribing the officials and agents of said State

of South Carolina to the end that the Board of Directors of the Dispensary might be induced to purchase the goods of said plaintiff at such excess prices and the difference between the fair market value of the goods so sold by said plaintiff to the said State and the prices at which said goods were so purchased from the plaintiff was fraudulently, and unlawfully employed by the plaintiff in bribing and corrupting the officials and agents of the said State, so that said State was cheated and defrauded out of a large sum of money in excess of the amount now claimed to be due by the plaintiff.

(c) That the plaintiff did not comply with the law of the State of South Carolina relative to the sale and purchase by the State Board of Directors in that they failed to comply with the provisions of said law requiring that only one bid shall be made by any one for said plaintiff and the said Gerson-Seligman Company, being in fact one and the same firm, did fraudulently and deceitfully pretend that they were separate firms and did frequently make two or more bids at the same time to the Treasurer of said State for consideration by the State Board of Directors of the South Carolina Dispensary.

(d) They failed to accompany their bids, or all of them, with the chemical analysis of the liquor offered for same.

(e) They failed to furnish the bonds required by law to insure the compliance by them with the terms of the contract of purchase and sale between them and the State Dispensary.

(f) That they violated said law in that they constantly had agents, representatives and solicitors in the State for the purpose of soliciting the purchase of their goods by said State, and that through its said agents and representatives soliciting (73) business from said Board of Directors.

(g) That the gross amount of sales made by the plaintiff and by said Gerson-Seligman Company to the State amounted in the aggregate to several hundred thousand dollars, and that in each of the said bills there were prices charged in pursuance of said conspiracy in excess of said fair market value.

(h) That the plaintiff sold to the State the same brand of liquors of a lower proof, at a price higher than it sold the same brand of goods of a higher proof to other parties.

(i) That the plaintiff sold to the State as whiskey an artificial whiskey or concoction made of spirits with a trace of whiskey added to it.

(j) That in pursuance of said conspiracy the advertisements for bids were illegal in that the prices of the liquors to be furnished were fixed in the advertisements and thus competition was prevented.

(k) That upon a just accounting between the State and the plaintiff, the plaintiff will be indebted to the State in a considerable amount.

12.

From the evidence already before the Commission, it is satisfied of the existence of a conspiracy to which some of the creditors and some of the Board of Directors were parties, but whether the plaintiff was a party thereto and whether its claims is valid or invalid, and whether it should be paid in whole or in part, are matters to be determined, as these defendants are advised after the Commission has heard the evidence of both plaintiff and the State.

13.

These defendants deny each and every allegation in the bill of complaint to the effect that these defendants had stated "That there would be no further dispute as to the amount due" plaintiff, or that these defendants had admitted that there was due the plaintiff a balance of $66,501.19, or any other amount, or that they had agreed to pay plaintiff any amount whatever, or that "the amount due (plaintiff) had been determined and agreed upon," or "that the amount claimed by (plaintiff) has been admitted by the defendants to be a just liability against the (74) State Dispensary and now due and payable out of the fund in their hands," or that "the said defendants have never claimed or pretended that said amount was subject to any offsets, credits or counter-claims." Each and every of said averments are untrue.

14.

Defendants deny the averment in said bill of complaint to the effect that plaintiff's account has been "adjusted," except to the extent that the books of the State Dispensary have been audited and the entries thereon have been brought into sub-

stantial agreement with the items of plaintiff's claim. There has been no determination or adjustment as to whether the items on said claim are proper and just charges against the State, nor whether the said claim is to be reduced in whole or in part by reason of offsets and counterclaims, nor whether said claim or any part thereof is illegal by reason of a non-compliance with the statutes of South Carolina, or by reason of frauds and conspiracies to which the claimant was a party, and in short for any of the reasons which the Attorney General and his associates contend they can establish by the evidence to which reference has been made. Moreover, defendants are advised that until final judgment all tentative conclusions or decisions however solemnly announced were subject to modification or reversal.

15.

These defendants denounce as gratuitously false the charges in said bill of complaint "that there has been formed and now exists an unlawful understanding or agreement between the defendants by which it has been decided that the money deposited in the banks above named shall be held and allowed to remain as long as possible in said banks, to be used by them for their own benefit and profit" and that the defendants "are wrongfully and unlawfully retaining said money for the use and benefit of the institution in which they are presonally interested and are wrongfully and unlawfully refusing to carry out and perform the duties in trust imposed upon them."

(75) The defendants aver that they deposited the funds received by them in thirty-one banks in the State of South Carolina, in which there is now on deposit to the credit of the State Dispensary Commission the aggregate sum of $706,599.82 on call and subject to check; that each and every of the said banks is sound and of undoubted solvency; that each and every of said deposits, with the exception of $16,505.59 on deposit with the National Loan & Exchange Bank as an active account draw interest from the date the deposits were respectively made at four per cent. per annum and are secured by State and municipal bonds and other solvent securities deposited by said banks with said Commission as collateral security for the payment of principal and interest of said respective deposits, the market value of which is largely in excess of the deposits secured thereby.

The defendants will exhibit to the court a list of the said banks with the amount deposited in each.

16.

That in addition to said amounts deposited and secured as aforesaid, the Commission will hereafter receive about $100,000.00 on account debts due by various County Dispensaries, which when received will in like manner be deposited and secured.

17.

The defendants admit that some of them are stockholders and directors in some of the banks named, but they submit that each of the said banks was selected solely because of its recognized solvency and their willingness to secure the deposits with sufficient and satisfactory collaterals and to pay four per cent. interest thereon.

18.

The Commission offered $150,000.00 to the Carolina National Bank and the Bank of Columbia, both of which refused to collaterally secure the deposit, and for that reason the deposits were not made with them.

The defendants are informed and believe that they could not have found banks, either in or out of the State of South (76) Carolina, in which to deposit said fund which would have received said deposits on safer or more favorable terms.

19.

The defendants deny the allegations in paragraph 14, and aver that there is no difference between the members of the Commission as to the method to be pursued in dealing with the creditors of the State for goods sold to the State Dispensary, and that the Commission as a body is a unit on the following propositions, to-wit: (1) to require all creditors whose claims are challenged by the counsel for the State to produce their books of original entry and their documents containing material evidence and to comply with all reasonable and proper requirements prescribed by the Commission. (2) To hear all competent evidence presented by the creditors or by counsel for the State, and after a careful and judicial consideration thereof, to determine what amounts are due by the State, and pay all claims which in their honest and impartial judgment are due by the State, and no others.

20.

The defendants deny that it has been eight months since Commissioner Arthur has met with the Commission. It is

true that he has not attended the meetings of said Commission since November. His physician wrote the Commission that Mr. Arthur's absence from one or more of the meetings was because of his illness.

21.

These defendants deny the allegations contained in paragraph 15 of the bill of complaint, and they denounce as gratuitously false and malicious the allegations in said paragraph, that "the defendants have entered into an unlawful combination or conspiracy with one J. Fraser Lyon, the present Attorney-General of the State of South Carolina, and under whose advice said defendants are acting to aid the said Lyon in carrying out his frequent threats to prosecute and imprison said officers and to that end have agreed among themselves and with said Lyon to withhold the payment of the claim of your orator and all other creditors until the said Lyon has obtained such evidence as may be sufficient to prove the guilt and secure the conviction of said officers; that under and pursuant to this agreement, combination or conspiracy, the defendants have refused and are still refusing to carry out the provisions of the Act of 1907." (77) The defendants aver that they withheld payment until the State could have an opportunity to collect the evidence with regard to said claims, and after a regular and orderly hearing, the Commission could reach a fair decision as to the validity and justice of the various claims.

21.

It is further averred that after the hearing of the case of Ullman & Co. on the 15th day of January, 1908, the Commission and the Counsel for the State were then and there ready to hear and determine the other cases assigned in their regular order, but said cases were not heard because of the absence of some of the claimants and because of the failure of others to comply with the reasonable orders of the Commission. Thereupon the Commission assigned all of the remaining cases for hearing to be commenced on January 30th, and to continue from day to day until all of said cases have been finally disposed of. It is the purpose of said Commission to hear and decide the cases in their order, upon the calendar, and notices to this effect were sent the various claimants by registered mail, and unless prevented by the orders of this Honorable Court, the Commissioners will execute said purpose and will pay each and every claim which shall be determined to be due and owing by the State.

22.

It is further averred that the State is the owner of said funds and should be sole defendant, at least the State is an indispensable and necessary party.

Defendants are advised that the State is not subject to suit and cannot be the sole defendant, or the defendant at all, and that therefore the court is without jurisdiction, but they submit that if it had jurisdiction there is no necessity for the appointment of a Receiver. The State authorized the Commission to act in the premises and these defendants have undertaken to discharge their duties fairly, promptly and conscientiously. They submit that all the allegations and insinuations made in the bill of complaint charging neglect, delay, or im-
(78) proper or fraudulent conduct on the part of these defendants are unfounded and false, and they submit that they should be permitted to complete the work and discharge the responsibilities imposed upon them by the State.

23.

These defendants demand strict proof of each and every allegation in the bill of complaint contained, except those herein specifically admitted to be true.

24.

The defendants submit herewith a number of affidavits and they pray that the same may be taken in connection with and as a part of their return, and having fully answered they pray to be hence discharged with their reasonable costs in this behalf expended.

J. FRASER LYON,
Attorney-General, Counsel for Deft's.

STEVENSON & MATTHESSON,
ABNEY & MULLER,
ANDERSON, FELDER, ROUNTREE & WILSON,
Of Counsel.

STATE OF SOUTH CAROLINA,
County of Richland.

(79) Before me personally came W. J. Murray, John McSween, C. K. Henderson and Avery Patton, defendants in the

above stated case, who, being duly sworn, severally depose and say:

That the allegations contained in the foregoing return to the rule to show cause are true, except those stated upon information and belief, and these they severally believe to be true.

W. J. MURRAY,
JOHN McSWEEN,
C. K. HENDERSON,
AVERY PATTON.

Sworn to and subscribed before me this 28th day of January, 1908.

D. W. McLAURIN,
[Seal] Notary Public.

Judgment of Commission on Claim of Ulman & Co.

(80)

Ullman and Company
vs.
The State of South Carolina.

Anchor Distilling Company
vs.
The State of South Carolina.

Claims on Account of Sales to State Dispensary.

The foregoing matters coming on for trial before the duly constituted Commission, created to investigate and make disposition of all matters and things concerning the South Carolina Dispensary, and by consent of counsel, representing the parties at interest, the two claims above stated having been heard together; after hearing the evidence submitted to the court and counsel for all parties having waived the right to make argument; we the Commission find from the evidence before us as follows:

1st. That the Anchor Distilling Company and Ullman & Company are one and the same firm composed of A. Ullman and L. C. Straus.

2nd. That the balance of account which from the books of the Dispensary it would appear stand open in favor of Ullman & Company is $35,012.47, and in favor of Anchor Distilling Company is $1,914.31, or a total of $36,926.78.

3rd. That the gross amount of sales made by said Ullman & Company and Anchor Distilling Company to the South Carolina Dispensary between September 15, 1904, and the abolition of the said Dispensary by enactment of the Legislature of the State of South Carolina amounted in the aggregate in the sum of $325,000.00.

4th. That beginning shortly prior to the purchases made by the State Board of Directors of the South Carolina Dispensary at its September meeting in the year 1904, and con-
(81) tinuing as long as purchases were made by said Board of Directors from said Ullman & Company and Anchor Distilling Company, there existed between said Ullman & Company and Anchor Distilling Company, their agents and representatives and the majority of the members of said Board of Directors of the said South Carolina Dispensary a conspiracy to cheat and defraud the State of South Carolina and its said Dispensary, and in pursuance thereof and during the said period said claimants by and with the aid and assistance of said Board of Directors or a majority thereof did cheat and defraud said State of South Carolina and its Dispensary by charging and collecting from said South Carolina Dispensary prices for the goods sold to said Dispensary which were largely in excess of the market value thereof, which overcharges were by agreement between said conspirators, made and used for the purpose of corrupting and bringing the officials and agents of the said State of South Carolina to the end that the Board of Directors of the South Carolina Dispensary might be induced to purchase the goods of said claimants in preference to the goods of other dealers in like goods of equal or better quality at cheaper prices and by reason thereof said Board of Directors were induced to buy the goods of said claimants at said excess prices and the difference between the fair market value of the goods so sold by said claimants to said South Carolina Dispensary and the prices at which said goods were so purchased from said claimants by said Board of Directors was fraudulently, unlawfully employed by said claimants in bribing and corrupting the officials and agents of said State as aforesaid, so that the said State of South Carolina and its Dispensary was cheated and defrauded out of the sum of $63,000.00.

5th. The Commission further finds that said claimants did not comply with the law of the State of South Carolina, relative to sales to and purchases by the State Board of Directors of
(82) the South Carolina Dispensary in that—

(a) They failed to comply with the provisions of said law requiring that only one bid shall be made by anyone; for

the said Ullman & Co. and Anchor Distilling Co. being in fact one and the same firm did fraudulently and deceitfully pretend that they were separate firms and did frequently make two or more bids at the same time to the Treasurer of the State of South Carolina, for consideration by the State Board of Directors of the South Carolina Dispensary.

(b) They failed to accompany their bids or any of them with chemical analyses of the liquor offered for sale.

(c) They failed to furnish any bond or bonds to insure the compliance by them with the terms of the contracts of purchase and sale between them and said State Dispensary.

(d) That they violated said law in that they constantly had agents, representatives and solicitors in the State for the purpose of soliciting the purchase of their goods by said South Carolina Dispensary, and did through their said agents and their representatives solicit business from said Board of Directors.

Whereupon it is ordered and adjudged that the said Ullman & Co. and Anchor Distilling Co. is indebted to the State of South Carolina and its Dispensary in the principal sum of $63,000.00 and interest thereon to February 16, 1907, the date of the abolition of the South Carolina State Dispensary by the Legislature of said State, in the sum of $5,317.50. That this sum be credited of Date February 16, 1907, with the aggregate amounts standing open on the books of said Dispensary in favor of said claimants, to-wit, the sum of $36,926.78; and (83) that after making the credit aforesaid the balance due by said claimants on said date, to-wit: Feb. 16th, 1907, is the sum of $31,390.72.

This January 17th, 1908, State Dispensary Commission.

W. J. MURRAY, Comr.
C. K. HENDERSON, Comr.
JOHN McSWEEN, Comr.
AVERY PATTON, Comr.

I hereby certify that the foregoing is a true and correct copy of the judgment of the State Dispensary Commission in the matter of the claim of Ullman & Co.

W. J. MURRAY, Chairman.

Affidavit of B. F. Arthur.

(84) Filed Jan. 29, 1908.

In the Circuit Court of the United States for the District of South Carolina. In Equity.

W. J. Murray et al., constituting the State Dispensary Commission of South Carolina, and W. J. Murray et al., individually, Defendants.

Before me personally came B. F. Arthur, who, on oath, says that he is a member of the State Dispensary Commission; that on account of the imperative engagements he could not go to Columbia either on yesterday or to-day for the purpose of reading over and verifying the return of the defendants in the above stated case; that he makes this affidavit to be used on the hearing of the application for inter-locutory relief. Deponent further says that the last meeting of the State Dispensary Commission, at which he was present, was in November, 1907, that he has not attended the meetings subsequent thereto, that he was prevented from attending one or more of said meeting by reason of his illness.

Deponent further says that there is no difference between the members of said Commission as to the method to be pursued in dealing with the creditors of the State for goods sold to State Dispensary and that the Commission as a body is a unit on the following propositions, to-wit:

1st. To require all creditors whose claims are challenged by the counsel for the State to produce their books of original entry and other documents containing material evidence and to comply with all reasonable and proper requirements prescribed by the Commission; 2nd, to hear all competent evidence presented by the creditors or by counsel for the State, and after a careful consideration thereof to determine what amounts are due by the State and to pay all claims which in their honest and impartial judgment are due by the State, and no others.

Deponent further swears that neither in his individual or official capacity has he now has the said Commission or any member thereof to his knowledge stated "That there would be (85) no further dispute as to the amount due," plaintiff, nor have the defendants or either of them to deponent's knowledge admitted that there was due the plaintiff "A balance of $66,501.19," or any other amount, or agreed to pay plaintiff any amount whatever, or stated that the amount due plaintiff had

been determined or agreed upon, or, "That the amount claimed by plaintiff has been admitted by the defendants to be a just liability against the State Dispensary and now due and payable out of the fund in their hands," or that the said defendants have never claimed or pretended that said amount was subject to any offsets, credits or counter-claims.

The deponent says that each and every averment in the bill of complaint to this effect, so far as deponent knows or believes is untrue. Deponent says that plaintiff's claim has never been adjusted to deponent's knowledge except to the extent that the books of the State Dispensary have been audited and the entries thereon have been brought into substantial agreement with the items of plaintiff's claim. That so far as deponent knows there has been no determination or adjustment as to whether the items on said claim are proper and just charges against the State, nor whether said claim is to be reduced in whole or in part by reason of offsets and counterclaims, is for any reason illegal."

B. F. ARTHUR.

Sworn to and subscribed to before me this 27th day of Jan., 1908.

J. F. WALKER, JR.,
[Seal] Notary Public for S. C.

Affidavit of N. Christensen.

(86) Filed January 29th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA. IN EQUITY.

The Fieschmann Company, Complainants,
vs.
W. J. Murray et al., constituting the State Dispensary Commission of South Carolina, and W. J. Murray et al., individually, Defendants.

STATE OF SOUTH CAROLINA,
Richland County.

Before me personally came N. Christensen, Jr., who, being duly sworn, makes this affidavit, to be used on the hearing of the application for interlocutory relief in the above stated case.

Deponent further says that he was a member of the Committee appointed by the General Assembly to investigate the

said dispensary and that in the discharge of his duties as said member visited in the year 1906, Cincinnati, for the purpose of investigation of, among others, the claim in favor of the plaintiff in said case against the said Dispensary. Deponent in company with Hon. J. Fraser Lyon, then also a member of the said Committee, called upon the plaintiff at its place of business in Cincinnati and after having explained to Mr. Fleischmann one of the officers thereof, the authority of the members of said Committee to investigate the books and papers of the holders of any claim against the State Dispensary, requested him, the said Fleischmann to allow him and Mr. Lyon to investigate the plaintiff's books relative to its claim against the State Dispensary aforesaid. The said Fleischmann, one of the officers of the plaintiff then and there refused to allow said inspection and notwithstanding the fact that deponent insisted upon his right to make such inspection, it was then and there declined.

(87) And the said Fleischmann then and there remarked to deponent that he was tired of investigations, and did not propose to do anything to assist therein; that he could afford to wait for his money and said in substance that he would rather lose the money than to submit to an investigation of his books.

N. CHRISTENSEN, JR.

Sworn to and subscribed before me this 28th day of January, 1908.

D. W. McLAURIN,
Notary Public.

[Seal]

Affidavit of W. H. Macfeat.

(88) Filed January 29th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA. IN EQUITY.

The Fleischmann Co.
vs.
W. J. Murray et al.

Before me personally comes W. M. Macfeat, who, on oath, makes this affidavit to be used on the hearing of the above stated case.

On the 16th day of January, 1908, at the meeting of the State Dispensary Commission, the following proceedings were had:

"Mr. LESTER: Mr. Chairman, on behalf of the Gerson-Seligman Co. and the Fleischmann Co., who are creditors of the South Carolina State Dispensary, in answer to the request of the Commission to produce certain books, and accounts, and the appearance of Mr. Early, as set forth in the Resolution of the Dispensary Commission passed January 14, 1908, the two creditors named refused to comply with this request for the following reasons, which I will state very briefly:

The first reason is that there is only one issue between these creditors and the State Dispensary, that is the question of the amount of money due to the creditors. The production of any book, or account of the Fleischmann Co. and the Gerson, Seligman Co., asked for, can only be proper under the Act appointing this Commission, in order to furnish evidence as bearing upon the amount due to these creditors, and for no other reason. The proof of the fact of the making of the contract with the State Boards as to each of these creditors lies already in the possession of this Commission, that proof consists of the advertised circulars which were issued by the State Boards asking for bids upon certain classes of goods, and consists of the offer of bids of these two creditors made at different times, which are in the possession of this Commission. So far as these two creditors are concerned those papers and accounts were presented and should be in the possession of this Commission having been delivered to them by these two creditors a year ago.

(89) The only question is as to the amount due. It is stated upon the Dispensary books and the books of this Commission that the goods which the State Boards of Directors, during the three years in which these companies did business, accepted these goods, resold the man obtained the money from the various County Dispensaries, which money formed a part of the fund in your possession. So far as the contract, or the fact of the making of the contract is concerned, the same has been fully executed by the State Dispensary buying the goods, and selling the goods and obtaining the money which is in your possession at the present time.

"As to the issue of the amount due; the Dispensary Commission has had the auditing of their books, they have ascertained the amount due, and our books, which correspond to the cent with the books of this Commission, show that they are, and I have *admit* upon the record of this Commission that the amount as set forth in the auditing of The American Audting Co., as owing by this Commission to the Fleischmann Co., and the Gerson, Seligman Co., is correct.

"Now, about May 15th, 1907, I came to this Commission, and Dr. Murray was present, and took to the proposition to

return the goods, he stated it would greatly facilitate the Board in their efforts to settle and adjust these claims if these creditors would take back the goods then on hand in the said Dispensary undisposed of. In compliance with the request, Gerson, Seligman Co. and the Fleischmann Co. ordered them to be returned, and there were returned goods of the agreed price and value of $21,000. Those goods were taken back and reduced these claims as I say, by over $21,000.

(90) "There is only one point as between us; that is not as to the return of the goods, because they are out, those goods have been taken back. The simple question of whether this Commission can now comply with the Statute, which is—

"Mr. LYON: I would suggest, when I gave my consent for Mr. Lester to proceed it was my understanding that he was going to tell in a few words the reason why he refuses to comply with the order of this Commission. If I catch the drift of his remark he is arguing his case—the law and the facts—why his claim should be paid. The Commission announced yesterday that it would take up the roster in the order arranged.

"Mr. Nelson; is here and his client and they are ready to proceed with that matter. I move that we proceed with the roster as arranged. If there is any other reason, specific reason why the Fleischmann Co. refuses to comply with the order of this Commission, the reason might be stated without argument. The Commission might proceed afterwards to hear argument if they desire to do so.

"Mr. LESTER: In reply to your objection; this Commission is now sitting as a court; they are clothed with certain powers of a court under an Act, and at the present time they are sitting in that capacity.

"Mr. LYON: You are correct.

"Mr. LESTER: I ask the court to be allowed to continue.

"Mr. LYON: There is another case set for hearing and we now call for that case.

"Mr. LESTER: I came here and have remained over here at the request made of me yesterday morning to appear and state my reasons. If it is simply a matter of the length of time which I am consuming I have no doubt Mr. Nelson will grant me a few minutes of his time.

"Mr. NELSON: Mr. Lester was summoned to be here at 10 o'clock, I hope the Committee will listen to his reasons and argument.

"Mr. FELDER: Counsel has not been advised, we have not been advised that Mr. Lester was summoned to be here this morning at 10 o'clock. As long as we are representing the State in this matter a summons or subpœna will not be issued or served without giving us notice.

(91) "Mr. LESTER: Mr. Patton told me to come here to-morrow (to-day) at 10 o'clock.

"Mr. PATTON: I said we had adjourned until 10.

"Mr. LESTER: You said would hear me to-morrow at 10.

"Mr. PATTON: I did not say anything of the kind.

"Mr. NELSON: Won't you gentlemen consent for him to go on which will enable him to get off this afternoon.

"Mr. FELDER: I made the suggestion day before yesterday that we might see the books; we do not want to discomode or put Mr. Lester out about it; we might be able to proceed with the books he has in hand if Mr. Earley is here, or will come.

"Now as to our reason for desiring Mr. Earley's presence, we are not disposed to and not required to state them. I think they will be made manifest when they come. Mr. Roy stated a few days ago that it would take thousands of dollars to bring all of these books here and that it would be embarrassing to their business, and all that sort of thing. We intend to accommodate counsel and facilitate hearings. If I understand Mr. Lester to say that he declines to bring any books, or declines to produce a witness called for who is without the jurisdiction of this State and cannot be brought unless he voluntarily comes, the man who conducted, negotiated this business, who was in charge of this territory for three years, we are at our row's end. Any reason he might think—

"Mr. NELSON: He is proceeding to give those reasons. I hope you gentlemen will allow him to proceed.

"Mr. ANDERSON: If he will simply state his reasons there will be no objection to his giving them.

"Mr. FELDER: Counsel is making an elaborate legal argument; he is proceeding to announce legal principle. We are not ready to argue his reason on the merits just at this time.

(92) "Mr. NELSON: You can reply to it at leisure.

"Mr. FELDER: The case is not up for argument. We will argue these legal questions when we come to them.

"Dr. MURRAY: The question is whether or not you will comply with the request we gave you, Mr. Lester; just say yes or no.

"Mr. LESTER: I ask *that* the court to be heard before them and to present my reason; the reasons may be more or less immaterial to the Commission, or to counsel of the Commission. I desire to state my reason in justice to the Commission. I have been before them four times. I have taken a certain stand with reference to the $400,000 worth of the creditors here. I consider it due to the Commission that I state the reasons why I have withdrawn from this arrangement. I have given so far the first reason, which I have stated.

"Mr. LYON: I object to Mr. Lester proceeding further. The Commission have ordered him to bring his books and papers to produce a witness, and he comes now before us to argue all these phases of his case. The Commission agreed upon its roster—docketed cases—it has set a case to be heard and the State is prepared to proceed with the case set for hearing, and not ready to proceed with the case Mr. Lester is arguing. If Mr. Lester has stated all the facts without any argument that he appears to want to make to this Commission I move that this matter be discontinued now and that we take up the case set for hearing.

"Mr. LESTER: It is not my intention to force a legal argument upon the Commission, or upon counsel; I wish to have upon the records of this Commission as briefly as I can state them the reasons that we refuse to comply with this order. Is there objection?

"Mr. FELDER: My information is that counsel came here this morning and announced that unless this matter was considered—I do not know whether this is correct or not—at this time, that he would go to Asheville and appeal to the Federal Judge; I do not know whether this is so or not.

(93) "Mr. LESTER: I can set you right before you go further, if you refer to me Mr. Felder. I did not state to any member of the Commission that unless this matter was taken up I would go to Asheville; I did state to the Commission that I proposed to go into the United States Court and bring an action against the Commission, the papers in that case have been prepared for several weeks.

"Mr. FELDER: We do not want counsel to stand before this Commission and state that he refuses to comply with his orders which are reasonable in order to make a record here to go to Asheville with. We object to his putting in the record before this Commission with a prepared argument the reason why he will not comply with this order. We call upon the Commission to proceed with the case announced for hearing.

"Mr. LESTER: I have no intention to put the Commission in any improper or unwarranted position.

"Mr. FELDER: We will cross the Federal Court *bride* when we reach it.

"Mr. LESTER: I make formal demand to pay the amount of these two creditors upon the auditing of the American Audit Co., which demand I assume is refused.

"Mr. PATTON: We will not do it in the face of Judge Pritchard's order.

"Mr. LESTER: Proceed to audit our account in accordance with the agreement that we have on the 3rd of January.

"Mr. PATTON: We will hear that later.

"Mr. LYON: When your case is reached we will proceed to audit this account and will expect Mr. Early and the Fleischmann Co. to produce books, papers, etc.

"Mr. LESTER: That we refuse to do.

"Mr. FELDER: I ask if the gentlemen who is with Mr. Lester, Mr. Overhault, as the representative of the Fleischmann Co., if he is the alter ego of the corporation.

"Mr. LESTER: He is not. He is not the executive officer.

(94) "Mr. FELDER: Can't have an attachment issued against him then requiring him to produce these papers. We ask that the case be called.

"Mr. PATTON: The Ullman & Co. case is set for 10 o'clock this morning.

"Mr. LESTER: I will meet you gentlemen at Phillipi.

"Mr. LYON: We will meet you there.

(The Ullman case entered upon.)

Deponent further says that he was the sworn stenographer for the Commission at the time that he took the above said proceedings and that he has correctly transcribed the same from his shorthand notes.

W. H. MACFEAT.

Sworn to before me this 27th day of January, 1908.

[Seal]

A. H. SEATS,
N. P. S. C.

Affidavit of W. H. Macfeat.

(95) Filed January 29th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA. IN EQUITY.

The Fleischmann Co., Plaintiff,
vs.
W. J. Murray et al., constituting the State Dispensary Commission, and W. J. Murray et al., individually, Defendants.

Before me personally came W. H. Macfeat, who, on oath, makes this affidavit to be used on the hearing of the application for temporary relief in the above stated case.

The deponent further says that he was the sworn stenographer for the said Commission on Dec. 20, 1907, and at the meeting of said Commission on said day the proceedings hereto attached were had; that deponent stenographically took said proceedings and he has correctly transcribed same from his

shorthand notes, and the said proceedings are accurately set forth in the nine sheets of paper hereto attached and made a part of this affidavit.

W. H. MACFEAT.

Sworn to before me this 27th day of January, 1908.

A. H. SEATS,
[Seal] N. P. S. C.

(96) Columbia, S. C., December 20, 1907.

The State Dispensary Commission met at twelve o'clock M.

Present: Messrs. Patton, Murray, Henderson, McSween, members of the Board. Also Atty. Gen. Lyon; also Mr. D. S. Matheson, of the firm of Stephenson & Matheson, attorneys for the Commission were present.

Mr. George B. Lester, attorney for the creditors appeared before the Commission and desired to make a statement and to submit a proposition.

Mr. Lester spoke as follows:

Mr. CHAIRMAN: We had a meeting of the creditors of the Board in Cincinnati a week ago on Monday; this meeting was called at the instance of the Fleischmann Co., which firm I represent as general counsel. It was called for the purpose of primarily endeavoring to put before the creditors who would appear at this meeting the position of this Board and the rights of this Board under the Acts creating it and the other Acts relating to the winding up of the Dispensary affairs.

I have followed the Dispensary situation personally on behalf of our company for several months, first taking it up the latter part of this year, and as Mr. Murray knows, I came here last spring about the 5th of May for the purpose of adjusting the accounts of the Fleischmann Co. I found after conference with him that matters were in a considerable state of confusion, and that this confusion could be relieved in a great measure by the creditors according to the suggestion of this Board in taking their goods back, which were not consumed, or had not been used, or distributed among the County Dispensaries. I spent several days here and made several inquiries. I returned to Cincinnati and advised our people to take back all the goods which were unused, as, in my judgment, this would facilitate the Board in their efforts to wind up the Dispensary

affairs, and it would be one long step towards accomplishing the result that I assumed we were all after.

Our people were asked by a number of firms in the West as to their attitude and as to the proposition of taking the goods (97) back. This was shortly after the notice of April 15. We advised them all to accede to the request of the Board and to take back such goods as were not used, all the goods that were on hand at the dispensary. As I understand, most all the firms complied with the request.

I attended the trial and *hear* the arguments in the Garrick case for the purpose of getting further light upon the view which counsel for this Commission and counsel for the State had of this liquidation proposition; and I came to the conclusion that the contention of the State as set forth by Atty. Gen. Mr. Lyon and by Mr. Stephenson, presented the proper view of this situation from the standpoint of the rights of this Board.

There have been many rumors around among the creditors as to what certain attorneys had represented they could do for them, "We can get your money; we can do this and that;" and they had the impression that the payment of their claims were being held up without any right. At this meeting in Cincinnati we were confronted with a number of men whose idea, as I apprehen it, was to pass resolutions of indignation or something similar to that, to take action more or less violent to get their money. I was requested on behalf of those present to present my view as to the situation, and I told them that the first thing that they should take under consideration was the right of this Board under the law, the rights that this Board had under the law, before they went forward with any proposition to try to collect their money. I told them, which I understand is the fact, that this Board occupies a position similar to the receiver of a corporation, or any other organization, that they were confronted with a very much muddled state of affairs when they took this matter up, and that inside of seven or eight months they had converted all available assets into money, as I understood it; that I did not think that in the space of the time allotted them that they had unreasonably delayed the payment of any claim; that no creditor who had any experience in insolvent corporations (and most of them who were present had) (98) could complain that this Commission or any body connected with it had not used due diligence in getting these matters straightened out; and I further advised which *in* my belief at the present time, that this Commission has the power to adjust and settle accounts, and for this purpose they have the right to gather evidence, examine witnesses and to occupy and carry on the functions of a court practically; that is my view of it; that every one of the creditors was subject to the revision

of his account and to a revision of his dealings with the old board of directors of the State Dispensary by this Commission; that this Commission had the power to do that. I said what we want to do is this. We want to get together and go before that Commission through a Committee or through some representative and take up these accounts one by one of those here who are willing to go, to get some adjustment, to see if we can arrive at a basis or principle of settlement, and when we can arrange at a basis or principle of settlement of these accounts then the details can be worked out very easily.

Now, these creditors appointed a committee to frame a plan at the meeting. I was on that Committee and we framed up the following plan, that the creditors there present should select a Committee of three of the members with power to negotiate with this Board on a proposition of settlement of the claims of the creditors; that this committee should have power to settle without further action upon this basis, to waive interest upon all their claims, to agree with this Board that the actual payment of all claims would be deferred until some date to be agreed upon, not later than the first of April. That proposition was put in and discussed for this reason; we understand and believe we had been credibly informed that all moneys arising from the liquidation of the Dispensary matter were in the banks of South Carolina, and knowing that the present financial condition is such that the immediate withdrawal of a large sum of money from any locality, whether South Carolina or anywhere else, would embarrass any of the bankers; so we agreed that this committee would have the power to defer the payments of these amounts until some future time, provided (99) we can arrive at some basis of settlement. Then the question came up of the discount on our claims. Some of the gentlemen present argued at great length that if we went before the court, if this Committee went before this Commission, and said "here, we are willing to take off a certain amount for the purpose of settlement, waiving the interest, taking off a certain percentage in order that we may have immediate settlement, and that that should be incorporated in the plan, and that was incorporated in the plan; and this Committee was given the power first to take off the discount on the claims of the creditors who signed this agreement, that the settlement should be adjusted upon the basis of six per cent. reduction from only the face value of the claims exclusive of interest. I have here the agreement and I will read it.

"We, the undersigned creditors of the South Carolina State Dispensary, hereby appoint Geo. B. Lester, E. M. Babbitt and Wm. Hull, our attorneys in fact, for us and in our names,

respectively, to represent us in the adjustment and collection of our claims and demands against the said South Carolina State Dispensary and, to that end, to do all things as they deem necessary or advisable; that they are empowered to negotiate with the Dispensary Commissioners, or their attorney, for the settlement of our claims and we are under no obligation to accept any settlement so negotiated, unless with further written consent to be signed by ourselves either at a meeting of creditors or by each individual creditor of the Dispensary.

Provided, however, that in the event the above named attorneys are able to settle our claims at a discount of nor more than six per cent. from the net face value thereof, without interest, that our said attorneys are hereby authorized to settle said claims upon said basis and for us and in our names to collect, receive and receipt for all such sums as shall be paid on said claims, remitting to us respectively the balance, after taking said six per cent. discount, or less, as the case may be, and our pro rata share of the necessary expense and disbursements of the above named committee.

(100) We do hereby further agree to furnish to our said attorneys in fact, if necessary, a full and completely itemized statement of our account, duly verified, at any time after the execution of this agreement by us."

Signed by the following—

Mr. W. D. Roy: Before you read the names I wish to say I was not present, but a gentleman friend of mine who did sign the name Belroy Distilling Co., wrote me a letter and asked me to sign it as President. I am with Mr. Lester in all he has stated except the discount. I am not willing to discount my claim. I am going to leave that for the Commission, if they think it just or not.

Mr. LESTER: I will read their names and the amount of their claims.

	Principal.	Interest.
Clarke Bros. & Co.,	$68,760.03	$2,188.84
A. Lehmann & Co.,	15,595.58	
The Fleischmann Co.,	66,501.19	5,809.58 to Oct. 15, '07.
The Gerson-Seligman Co.,	4,485.50	302.94 to Oct. 15, '07.
Strauss Pritz & Co.,	7,980.56	412.35
W. W. Johnson & Co.,	1,945.99	

(101)	Principal.	Interest.
The Old 76 Distilling Co., W. C. Sanders, V. P.	3,662.83	219.77
Joseph A. Mangus & Co.,	18,204.25	930.70 to Jan. 1, '08.
H. Rosenthal & Sons,	4,543.63	215.05
The Live Oak Distg. Co.,	27,972.22	1,482.82 to Jan. 1, '08.
Ullman & Co.,	35,012.47	2,100.75 to Jan. 1, '08.
Anchor Distillery Co.,	1,914.31	258.10 to Jan. 1, '08.
D. Sachs & Sons,	9,041.33	510.56 to Jan. 1, '08.
Richard & Co., By M. H. Goodman.	1,775.50	100.00 to Jan. 1, '08.
Bellair Distg. Co. (about) By M. H. Goodman.	$ 6,250.00	
Anhuiser-Busch B. Asn., Per E. S. Clauss.	19,555.09	$ 733.16 to Jan. 1, '08.
The Frank Tullidge Co., Per J. D. Blairstros.	1,135.94	67.52 to Dec. 31, '07.
Gallagher & Burton, Per T. M. Morderson.	———	———
The H. A. Thurman Co., E. M. Babbitt.	9,478.45	601.44
Jno. T. Barber & Co., E. M. Babbitt.	1,809.58	———
Belroy,	40,008.33	2,154.59

Mr. LESTER: (Addressing Mr. Roy) You had better put your claim in on this subject to your agreement as above except the agreement for discount. Belroy, $40,008.33.

Mr. ROY: We unite in all other parts of the agreement except the agreement to discount at six per cent.

Mr. LESTER: That is the situation as I have stated to you gentlemen. I have stated substantially what occurred up there without going into the details of it.

Now, this Committee after the meeting was over, the meeting of the creditors, we got together and thought best that some one of the Committee should go before this Commission, rather than go through the usual method of employing atttorneys, etc., that probably it would be better as business men to come to-

gether, and I was designated by the Committee, appointed to come here and talk this matter over with the Board.

I have a few ideas of my own on this proposition of discount. It seems to me that the first thing, if the Commission are ready to take up the question of payment of these claims, is to arrive at some basis of settlement, either by taking up each individual claim and discounting that, or to take them up as a lump amount substantially on the basis which these creditors have agreed, or upon some other discount basis. Personally I (102) think the fairest way would be to take up each claim individually, and as I understand a good many of these creditors are subject to deduction for the very good reason that they have charged the Dispensary more for goods than they were getting from other customers, and getting more money out of the Dispensary, than they were legitimately entitled to. I am willing to take any method that the Commission are willing to adopt, but there is one thing I want to do. I want to go back to these creditors with some kind of proposition, some kind of agreement, tentative or otherwise, so we can act upon it, and get the rest of the people in. It is a very difficult thing to get these creditors together, each has his own individual view. I think we were exceedingly fortunate in getting the number that we had at the meeting. If I can go back to the creditors with some kind of tentative agreement with this Commission as to the adjustment of their claims I think we will have no difficulty in getting every proper and legitimate creditor of this Dispensary into line and adjust these claims. I am perfectly willing to take up this matter of getting these people in line.

I have about stated the situation from the creditors' standpoint. If Mr. Lyon or any other member of the Board would like to make a suggestiton I would be glad to have you do so. I have talked with most of the creditors and know their positions.

Mr. Lyon: I am not in a position to discuss the matter, or to argue anything at all in regard to this proposition until it is discussed by the Board when they see fit to come together after discussing it among themselves, the general proposition. As I understand the matter, I am called here simply to advise them in regard to it, and they are responsible for whatever action is taken. If there is anything on which my advice is desired, I am at their service.

(103) Mr. Patton: South Carolina certainly wants to pay every honest dollar it owes, and dollar for dollar, and anything that would look like a compromise, I do not think the State of South Carolina would entertain it for a moment. I know our position through the Commission will be to pay every just

claim, dollar for dollar, and if they are just we will not take a cent off; but at the same time the rights of the State will have to be protected in the matter of overcharges. That is the reason why we called for books and papers and persons who are competent to testify as to prices, rebates, etc. We did that under our authority of the act which authorized us to withhold these claims until such persons were in the custody of the Commission with their books and papers and themselves prepared to testify. We know there have been overcharges of the most outrageous kind and we have in a great many instances evidence that is unmistakable, those overcharges are so common that we are justified in believing that it is a general thing. There may be some concerns, and I have no doubt there are, who have not overcharged the Dispensary, and they ought to have their money in full, those who have overcharged ought to be able to settle with the State at the market value. It might be a hardship to bring books and papers here, but it would also be a hardship for the State to pay overcharges that we know exist in some cases.

Mr. LESTER: *That is the very meat of the cocoanut.* I do not know anything about any of these claims except I personally represent the Fleischmann Co., I can answer for them, if they have made any overcharges they will take it off. Every piece of goods upon which there was an overcharge was taken back upon my advice, and I think every bit of the goods left on our account is bulk stuff sold at $1.50 and $1.65 per gallon upon which we paid $1.10 revenue and the balance as manufacturing cost.

The notice which was sent out gave no time at which these books were to be produced. Personally I do not believe there (104) will be any to produce his books, except the matter of inconvenience and the lack on information which the commission could get, unless we produced the whole volume of books, there is a distinct hardship in any concern, especially situated as our company is, whose business is several million of dollars over a length of purchase covering a period of one year and I think when the representative of these people come here and say that he is willing on their behalf to take off any overcharge there may be, that the result of the Commission is accomplished.

Mr. HENDERSON: How are we going to arrive at the overcharges unless we have the books?

Mr. LESTER: When the Commission has agreed upon the amount of overcharges, we will go to the creditors and say "Here, your amount of overcharge is so much, you will have

to take that off, if you do not want to take it off, drop out of this arrangement, if you do want to take it off, we will take it up with this Commission again," that is the only practical way we can get at this.

Mr. HENDERSON: That is practical if they agree with what we claim. We want to prove by their books what they charged people similarly situated.

Mr. LESTER: I doubt if you could prove that by the books. What you could show by the books would be similar goods, or rather what appeared to be similar goods, was sold in like qualities to customers at lower prices, but in the whiskey business, in the spirit business age of the goods may make a difference of several dollars on a case. For instance, a man orders, the Dispensary, say, orders whiskey of a certain proof and certain age which is sold open simply, that may be five years old rye, now that whiskey is sold under a certain brand at ten or eleven dollars per case and sometimes that whiskey under brand of two or three years whiskey could be sold for seven dollars per case. You are going to get up against a question of fact wherein (105) every man who has dealt with the Dispensary is going to offer his evidence along this line. For instance, we make a brand of whiskey which we carry in bond for six or seven years that we sell for three and four dollars per gallon to compounders and we pay warehouse charges and we pay for exportation shown by the *regaging* and we pay interest, etc., that whiskey is sold at, say, as Old Crow for instance, it is not that whiskey, say Old Crow Rye, these people buy, it has the government stamp, Government stamp of the date of entry of the barrel and the date of taking it out of bond on the barrel and they pay four or five dollars a gallon for it; we can make a rye that we call old crow that we can sell for $1.50 per gallon, which is done right along through the trade, there is not one concern in the world that does not do it. The whiskey people who buy this stuff, they can tell it in a minute, there is no deceit about it, it is an absolutely understood thing, whether straight or blended goods, whether compounded or blended goods, is absolutely known and every one has a different price. Mr. Roy here is a whiskey man and he knows that.

Mr. ROY: If you gentlemen will get one of my bids to the County Dispensaries, you will find that I have only one brand, Belroy, you will find my Fall '04 Belroy $1.97½, and Fall '01 Belroy $2.37½; looks like an overcharge of forty cents per gallon, that is the difficulty that you will confront in looking

for overcharges on the whiskey books. So far as my books are concerned, whenever you want them they will be at your service.

Mr. LESTER: These things can only be ascertained definitely by having here the men connected with every one of these firms and take up these accounts with the representatives who are familiar with the goods at the time they were sold and take up every item of every account and have them to testify or explain concerning it. You will see that this would be an endless task. I do not believe there is one on that list but what is willing to do that or anything that you desire, but as a matter (106) of convenience and as a practical method at that, it is an absurd and tedious way. What I prefer to do would be to take the Commission's estimate of the deduction of these accounts and go to these people, or have them meet in Cincinnati, or some other convenient point, and say to them, your account is so much and for this reason that you have charged so and so in Savannah, Nashville, Chattanooga, etc., nine dollars a case for your goods and you have charged the dispensary twelve dollars a case for your goods and you have sold them 425 cases, consequently your account is reduced—whatever the Commission may find it to be—you can take it or leave it, if you take it we will settle on that basis, if you want to contest it you can go ahead and produce your books and go before the Commission and they will hear you. That is my idea of getting at it. These men are willing to adjust their accounts on a fair basis.

Affidavit of William Banks.

(107) Filed January 29th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA. IN EQUITY.

The Fleischmann Company, Complainant,
vs.
State Dispensary Commission of South Carolina, and W. J. Murray et al., individually, Defendants.

STATE OF SOUTH CAROLINA,
Richland County.

Before me personally came William Banks, who, being duly sworn, says on oath that he is city editor of The State, a daily newspaper published in the City of Columbia, said State and county and in such capacity as city editor of said paper

handled two communications dated at Asheville, N. C., Jan. 1, 1908, which was published in said paper on the morning of January 20th, 1908, in the first column of the second page of said issue.

Deponent further says that the copy of the latter to The State as published is a correct copy of the original which was received by due course of mail and contained as an enclosure an open letter to T. Moultrie Mordecai, Esq., Charleston, S. C., said letter to the State requesting the publication of the letter addressed to Mr. Mordecai and the letter so addressed and published following said letter to The State is a correct copy of the original and a copy of said letters as published as heretofore attached. Deponent identifies both of said originals by writing on the margin of each sheet "Identified as originals, William Banks."

WILLIAM BANKS.

Sworn to and subscribed before me this Jan. 27th, 1908.

[Seal] A. H. SEATS,
Notary Public, Richland County, South Carolina.

The State, Columbia, S. C., Monday, January 20, 1908.

(108) LESTER REPLIES TO MR. MORDECAI.

Further Controversy Upon the Issue of Veracity Between Charleston Lawyer and the Attorney of the Whiskey Trust.

To The Editor of The State:

I enclose herewith copy of letter which I have to-day sent Mr. Mordecia of Charleston, S. C. This is in answer to an open letter published in your issue of Jan. 17, 1908, directed to me and to the public in general and purporting to be written and signed by Mr. Mordecai, and so published at his request. If you think the subject is of sufficient interest to your subscribers and the public I would be glad to have you publish this letter.

GEORGE B. LESTER.

Asheville, N. C., Jan. 18, 1908.

Asheville, N. C., Jan. 18, 1908.

T. Moultrie Mordecai, Esq., Charleston, S. C.

Dear Sir: Your letter under date of Jan. 6, 1908, published in the Columbia State, in the issue of Friday, Jan. 17,

1908, has been brought to my attention this evening and as the statement is dignified and I believe is what you believe to be a fair account of the facts as you view them, it is certainly entitled to a reply from me.

Your account of the circumstances of our meeting in Richmond and up to the time of the meeting in Cincinnati is correct. The reason I sought you out in Richmond when I was there was that Mr. Gibbes Whaley, a former townsman of yours, had recommended you as an attorney of ability and one familiar with the dispensary situation. Mr. Whaley had sent me letters and copies of letters you had written to him during the summer of 1907 in reference to the dispensary matters, which letters I have now in my possession.

Your proposition of a lump sum settlement and your plan of procedure seemed reasonable and convincing; so much so, that upon your assurance we called the meeting of creditors in Cincinnati. You did state to me that you represented about (109) $165,000 in claims of creditors, and made this statement before the Cincinnati meeting. It was in some degree, upon this assurance that we adopted your plan and called the meeting.

What took place at the meeting of the committee appointed by the creditors, where you claim you were retained as counsel, is known to four people, Mr. Hull, Mr. Babbitt, you and myself. My recollection is very clear, and I believe the other two gentlemen of the committee will corroborate me when I assert that we told you severally that we were willing for you to take up the proposition of a lump sum settlement with Mr. Stevenson, and get the best terms you could and report the result of your negotiations to me at Charleston. I stated to you that this would have to be done by you at your own expense and subject to the right of the committee to accept or reject the plan of settlement agreed upon, and is rejected, or you could make no progress you were to drop out; but if your plans succeeded we would enter into an agreement for your compensation. You probably recollect also that I offered to give you a written memorandum of this arrangement, but you declined. You were not retained as counsel of the committee in any sense. Your position was entirely that of a negotiator, who if he can bring the parties together and effect a settlement is entitled to his compensation but not otherwise. That you failed in your efforts is a matter of too recent and painful history to discuss.

When I telephoned you after seeing Mr. Stevenson, that your discount plan of settlement had been turned down it was after a conference with the latter and Dr. Murray, and I then told you that I proposed to go before the commission alone and you expressed disappointment, that your plans had come to

naught, and afterwards wrote me a letter telling me your views, as to how the present the matter to the commission.

I never had the slighest idea of turning you down or of dealing in any but a fair way with you and assured you in Cincinnati and in Charleston that when at attorney was needed, I would advocate retaining you, not only for the company I represented but for all other creditors who joined us.

(110) Your telegram which you sent Sunday, was not received by me until the day before I left for Cincinnati, and I fully expected you would be there, so delayed answering. You did not appear at the meeting, which fact was commented upon.

In the meantime Roy had broken loose with that unfortunate letter, which utterly failed in its purpose and misstated the situation. I don't know what better evidence you would want that Roy and his "syndicate" had broken with me. The trouble with you was that you underrated your strength with certain of the large creditors and thought that they as well as myself had thrown you down. Such was not the fact. I advocated your retention at the last Cincinnati meeting, in case that suit was brought and certainly would have retained you in our case, and I believe Mr. Warts would for his company, and I feel quite confident that other of the large creditors would have done the same. Even after your telegram was received, I did not change my views as to this, but when I found out in Asheville, that you had, as I supposed, broken faith with all the creditors by taking away the Wilson Company who not later than a week before had sent us their power of attorney, and you succeeded in again tying up the funds, I concluded that you believed that the committee as well as myself had thrown you down and you had taken this hasty action to "get even."

Your action was ill advised and unnecessary, as the committee were then on their way to Columbia and would have straightened out your matter, I believe, to your entire satisfaction.

You have been led into error concerning the Melton incident, and made statements that are not strictly true as regards may conduct in that affair, and as the statement I am about to make can be readily verified by Mr. Melton himself, who is a thoroughly honorable member of your profession, I trust you will avail yourself of my suggestion to set yourself right.

I met Mr. Roy in Charleston, and gave him a letter ad-
(111) dressed himself which he could show to Mr. Melton, in which letter I authorized Mr. Roy to retain Mr. Melton to act for the committee until Dec. 28th, 1907, but no longer and to open negotiation through the banks Mr. Roy now has that

letter I assume, I fully intended to advise you of this arrangement when you arrived in Charleston, but before you arrived I had been in Columbia had seen Mr. Melton and he had declined to act, now for the reason stated in the Roy letter but for reasons sufficient for him.

You will recollect that I did tell you that plan of settlement had been discussed with Mr. Melton and others, and that it had been abandoned. Such was the fact and from the Saturday before I saw you in Charleston, I had never seen Mr. Melton but once, and that was in his club at Columbia, and the matter was not referred to and no other agreement or offer to retain Mr. Melton has ever been made by me or any of the committee since I last saw you in Charleston, or have any of us seen him, except as I have above advised.

Neither myself nor the committee had any dealings with the so-called "Syndicate" until Jan. 2, 1908, when we submitted a proposed contract to the National Loan and Exchange Bank to employ them to represent the creditors in collecting their claims, which the bank refused to sign.

It now appears not only from your statement but from other facts that have come to my knowledge, that you had some reason to believe that the committee had broken faith with you, and counted you out of their calculations. Such was not the fact prior to your action in the Wilson case. The whole Committee were on their way to Columbia immediately after the last meeting at Cincinnati with the intention of taking up with you in person your claims that you were counsel and endeavor to have you and whatever creditors you represented join with the committee under some satisfactory arrangement.

As it was your action interfered with the committee's (112) plans of settlement for the time, but as other influences have since intervened to prevent the possibility of any satisfactory settlement with the commission a discussion of this phase is useless. I want to set you right on one statement. I did not telephone to Asheville and my stopping over here was purely accidental, owing to the fact that the train for Columbia did not wait for the train we were on. By the merest chance I learned that your injunction had been granted, and I took immediate action to protect the rights of my clients. In regard to the statement published in the Columbia State on Jan. 2, I have not the article before me, but my recollection is that it is substantially correct as to the main facts, viz.: you were never retained as counsel for the Committee and you claimed to all of us that you represented $165,000 of claims, and did not produce them and your negotiations for a settlement came to nothing.

I am sending a copy of this letter to The State, as it is by their favor in publishing your communication that I have been made aware of your grievances.

I am in hopes that they will in fairness to me, give me a part of the "space" they have given to you.

Yours respectfully,

GEO. B. LESTER.

Affidavit of John T. Meehan.

(113) Filed January 29th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

The Fleischmann Company, Complainant,
vs.
W. J. Murray, et al., constituting the State Dispensary Commission of South Carolina, and W. J. Murray, et al., individually, Defendants. } In Equity.

STATE OF SOUTH CAROLINA,
Richland County.

Before me personally came John T. Meehan, who, being duly sworn, says on oath that he is a reporter for "The State," a daily newspaper published in the city of Columbia, said State and county, and that he occupied the position as reporter of said paper on December 31, 1907, and January 1, 1908.

Deponent further says that in his capacity as said reporter he had an interview with George B. Lester, attorney for the above stated complainants, on December 31, 1907, at the Colonia Hotel, in the city of Columbia, at about 9 o'clock P. M. on said date, and the statements made to deponent at that time were published in "The State" on Thursday morning, January 2, 1908, under the heading "Papers Received in Wilson Case," the same appearing on page 9, first column, of the issue of said date.

Deponent further says that following the sub-head "Mr. Lester's Statement," in said article above referred to appears

the correct report of the interview as had with Mr. Lester, and a copy of said article containing the statement is hereunto attached.

Deponent further says that subsequent to the publication of said interview he met Mr. Lester in the Parlor Restaurant, in the city of Columbia, at which time the said Lester stated (114) that the article as published was absolutely correct, with the exception of the reference as to Mr. Mordecai, and as to this he stated to deponent that it was well that he had cut out some of the references to Mr. Mordecai. Deponent further says that on this occasion the conversation took place in the Parlor Restaurant, as stated, between the hours of 1 o'clock A. M. and 2:15 o'clock A. M. on the 16th of January, 1908, and that during said conversation the said Lester reiterated the statement formerly made in which he expressed confidence in the State Dispensary Commission and invited deponent to be present at the hearing to be had that morning at 10 o'clock A. M. at the State Dispensary and said to deponent "the commission will be sitting as a court and they cannot refuse you admission."

JOHN T. MEEHAN.

Sworn to and subscribed before me this January 27th, 1908.

[Seal] A. H. SEATS,
Notary Public, Richland County, South Carolina.

(115) The State: Columbia, S. C., Thursday Morning, January 2, 1908.

Papers Received in Wilson Case.

Certified Copies of Petition and Injunction Order.

Mr. George B. Lester Talks.

Explains Mr. Mordecai's Connection with the Creditors of Dispensary. The Wilson Claim.

A certified copy of the petition filed by the Attorneys for the Wilson Distilling Company and the temporary restraining orded issued by Judge Pritchard were served upon the Dispensary Commission yesterday by mail. The service the day before was only of the injunction, which was sent by tele-

graph from the clerk of the United States Circuit Court in Charleston.

The petition recites that the action is instituted at this time as the complainant understands that the commissioners are about to pay out certain money and liquidate the affairs of the Dispensary. The petition states that a quantity of liquor was sold to the Dispensary in 1906 through the directors, authorized to purchase it, including whiskeys and liquors to the amount of $2,979.12, which were duly accepted and were sold at a large profit. None of this liquor has been paid for and now that preparations are being made to meet certain claims, the complainant institutes its action, believing that unless the commissioners are restrained by preliminary injunction the "defendants" will pay out on improper claims a large part of the funds in their hands aforesaid and will convert into the Public treasury of the State of South Carolina a large part of said fund, to the irreparable damage of your orator and other persons having just claims against said dispensary and against said fund in the hands of the defendants."

The suit is brought, the orator avers, on its own behalf and in behalf of all other persons having just claims against the dispensary and against the fund in the hands of the defendants. The petitioner then asks the issue of the preliminary restraining order which Judge Pritchard saw fit to grant.

Mr. Lester's Statement.

(116) According to Mr. George B. Lester, chairman of the Committee representing the majority of the whiskey creditors, a meeting of the principal creditors of the State Dispensary was held in Cincinnati on Dec. 9, at which time a committee of three was appointed to adjust the accounts of the various creditors represented at the meeting. "At this Meeting," Mr. Lester states, "Mr. T. M. Mordecai, appeared and vouchsafed the information that he represented about $175,000 worth of claims of Southern creditors and was in a position to get an early settlement of all accounts against the State Dispensary. He informed this body that he was familiar with all that had been done by the commission, understood clearly just what was necessary to secure the money from the commission and if given the authority by this meeting of creditors he would immediately proceed to collect the accounts. He had letters showing that he was a prominent and an able attorney, etc.

"Mr. Mordecai wanted to make a proposition to the Commission that they pay all of the claims of these creditors, less a discount of 6% and less interest. He was informed that it

was not the purpose of the creditors there represented to employ any attorneys at this time, but he was told to go ahead and present his proposition to the commission and report to the committee appointed.

"Mr. Mordecai, presented his proposition and it was promptly rejected by the Commission. They informed him that they did not propose to settle any of the accounts on that basis, that they would take up each account, and as soon as it was found to be all right would adjust it.

"That is all Mr. Mordecai had to do with settling the claims which this special committee represents and which we have power of attorney to adjust. I called upon Mr. Mordecai and asked him who were the creditors he represented to the extent of $175,000, and I found that he represented but one claim, which amounted to about $4,000. He was informed that the committee did not need his services at this time.

"Just how he managed to get hold of the claim of the Wil-
(117) son people I do not know. I have power of attorney in my pocket now, signed last Thursday by the vice-president of the Wilson Distilling Company, and Mr. Mordecai has managed to get hold of this account some way since that date."

Praises the Commission.

Mr. Lester says that he is satisfied that the commission has no other desire than to treat the creditors of the State Dispensary with all fairness. "I am satisfied that they will pay out the money which justly belongs to each creditor as soon as the different accounts can be adjusted. I have never felt that the commission had any desire to purposely delay the payment of any of these claims. They want to investigate each claim thoroughly, which they have a right to do, before making any payments.

"I consider that this commission has done remarkably well in disposing of the vast amount of property which they were put in charge of in so short a time. Under a receivership at least twice the time would have been consumed. They have practically completed their work, in just a little over eight months and deserve credit for it."

Mr. Lester says that he does not that any serious inconvenience will be occasioned by the order issued by Judge Pritchard. He says he is confident that the injunction will be dissolved on the 11th, or at least, that not more than the amount of the claim of the Wilson Distilling Company will be held up by the court.

The proceedings instituted by Mr. Mordecai and associated differ from the recent action taken by Garret & Co. of Nor-

folk against the Dispensary Commission, in that the former proceedings were for a mandamus, which Judge Pritchard refused to sustain upon the final hearing.

Proposition as to Loan and Exchange Bank.

(118) Filed January 29th, 1908.

Exhibit "A."

(118) We, the undersigned creditor of the State Dispensary of South Carolina, hereby appoint the National Loan & Exchange Bank, of the City of Columbia, S. C., and W. D. Roy, of Louisville, Ky., attorneys in fact for us and in our name to represent us in the adjustment and collection of our claim and demands against the said South Carolina Dispensary, and to that end employ such attorneys and other persons, and to do all such things as they may deem necessary or advisable with full power of substitution. Provided, however, that no authority is herein given to institute any proceedings at law, without first referring it to us and obtaining our consent thereto.

And we do hereby agree to allow the said National Loan & Exchange Bank and W. D. Roy six per cent. (6%) of all sums as may be hereafter collected, or paid, or satisfactorily secured to be paid on our claim for such services as may be rendered by them or other persons employed by them.

And we do hereby authorize and empower the said National Loan & Exchange Bank and W. D. Roy for us and in our name to collect, receive and acknowledge receipt for all such sums as may be paid on our claims, remitting us the balance after deducting the said six per cent. (6%) for their services and expenses.

In the event disputes or differences shall arise as to the amount due on said claims, or the prices charged in said claims and demands, or as to any other matter effecting the amount thereof, it is understood that the same shall be referred to us for advice and instructions.

We also agree to waive interest on said claim and demands if such waiver be found necessary to facilitate a settlement.

And we do hereby agree to furnish to our said attorneys in fact a full itemized statement verified, or our said claims and demands, forthwith upon the execution of this agreement by us.

List of Banks in which Deposits are Secured by Collaterals.

(119) Filed 29th day of January, 1908.

National Loan and Exchange Bank,	$220,000.00	Columbia, S. C.
The State Bank,	50,000.00	" "
The Palmetto National Bank,	60,000.00	" "
The Peoples Bank,	10,000.00	Union, "
The Bank of Timmonsville,	10.000.00	Timmonsville, S. C.
The Columbia Savings Bank & Trust Co.	45,000.00	Columbia, S. C.
The Bank of Charleston,	70,000.00	Charleston, S. C.
The Peoples Loan & Exchange Bank,	5,000.00	Laurens, S. C.
The Bank of Orangeburg,	14,000.00	Orangeburg, S. C.
The National Exchange Bank,	5,000.00	Chester, S. C.
The Bank of Aiken,	35,000.00	Aiken, S. C.
The Commercial Bank,	5,000.00	Camden, S. C.
The Peoples Savings Bank,	5,000.00	Abbeville, S. C.
The City National Bank,	20,000.00	Greenville, S. C.
The Greenville Savings & Trust Co.,	10,000.00	Greenville, S. C.
The Lexington Savings Bank,	5,000.00	Lexington, S. C.
The Peoples National Bank,	15,000.00	Charleston, S. C.
The Peoples Bank,	20,000.00	Greenville, S. C.
The Norwood National Bank,	15,000.00	Greenville, S. C.
The Bank of Camden,	20,000.00	Camden, S. C.
The Merchants & Farmers Bank,	10,000.00	Spartanburg, S. C.
The First National Bank,	5,000.00	" "
The Central National Bank,	5,000.00	" "
The Bank of Dillon,	10,000.00	Dillon, S. C.
The Enterprise Bank,	10,000.00	Charleston, S. C.
The Merchants & Planters Bank,	10,000.00	Gaffney, S. C.
The Farmers & Merchants Bank,	5,000.00	Anderson, S. C.
The Merchants & Farmers Bank,	23,594.23	Cheraw, S. C.
The Farmers & Merchants Bank,	2,500.00	Walterboro, S. C.
The Commercial & Savings Bank,	10,000.00	Florence S. C.
The Bank of Hartsville,	10,000 00	Hartsville, S. C.
The National Loan & Exchange Bank,	16,505.59	On deposit as on active account, after charging up all outstanding checks.
Total,	$706,599.82	

Appearance of Palmetto National Bank of Columbia.

(120) Filed February 29th, 1908.

Weston & Aycock,
Attorneys at Law,

Columbia, S. C., February 28th, 1908.

Hon. C. J. Murphy,
Clerk United States Court,
Charleston, S. C.

Dear Sir:

Please note our appearance for the defendant the Palmetto National Bank of Columbia, in the case of the Fleischmann Company, complainants, against W. J. Murray et al., defendants.

Also kindly enter our appearance for the same defendant in the matter of the Wilson Distilling Company et al., complainants, against W. J. Murray, et al., defendants.

Thanking you for your attention, we are,

Very truly yours,

WESTON and AYCOCK.

Notice of Appearance for the Columbia Savings Bank and Trust Co.

(121) Filed March 2nd, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT, AT COLUMBIA.

The Fleischmann Company, Complainant,
against
W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson, and Avery Patton, constituting the State Dispensary Commission of South Carolina, and W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, individually, and The National Loan and Exchange Bank, The Palmetto National Bank, The Columbia Savings and Trust Co., all of Columbia, South Carolina, The Bank of Timmonsville, of Timmonsville, South Carolina, The Peoples Bank of Union, South Carolina, The Piedmont Savings and Investment Company of Greenville, South Carolina, The Merchants and Farmers Bank of Cheraw, South Carolina, and the Bank of Camden, Camden, S. C., Defendants.
} In Equity.

To the clerk of the said court:

Please enter our appearance as attorneys for the Columbia Savings Bank and Trust Co., (erroneously styled The Columbia Saving and Trust Co.), defendant, in the above entitled cause.

MELTON & BELSER,
Attorneys for the defendants, the Columbia Savings Bank and Trust Co.

Dated at Columbia, S. C., this 29th February, 1908.

Appearance of the National Loan and Exchange Bank.

(122) Filed March 2nd, 1908.

Law Offices

Allen J. Green. Walter T. Green.

Columbia, S. C., February 29th, 1908.

Mr. C. J. Murphy,
Clerk U. S. Circuit Court,
Charleston, S. C.

Dear Sir:

In the matter of

The Fleischmann Co., Complainants,
vs.
W. J. Murray et al., Defendants.

Complaint filed on equity side of the court, you will please enter my appearance for the defendant The National Loan and Exchange Bank of Columbia in said case and oblige,

Yours truly,

ALLEN J. GREEN,
Attorney for The National Loan and Exchange Bank.

Acknowledge receipt.

Order Continuing Injunction.

(123) Filed March 2, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT, AT COLUMBIA.

The Fleischmann Company, Complainant,

vs.

W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson, and Avery Patton, constituting the State Dispensary Commission of South Carolina, and W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, individually, and The National Loan and Exchange Bank, The Palmetto National Bank, The Columbia Savings and Trust Company, The Bank of Timmonsville, The Peoples Bank of Union, The Bank of Aiken, The Piedmont Savings & Investment Company, and The Merchants and Farmers Bank and the Bank of Camden, Defendants.

Order.

This cause came on to be heard before the undersigned Judge at Chambers in Asheville, North Carolina, on the 29th day of January, 1908, upon the notice to show cause why the relief prayed for in the bill should not be granted any why a receiver should not be appointed to take charge of all the funds in the hands of the defendants, constituting the State Dispensary Commission of South Carolina, and upon the defendants' return to said notice, and having been heard, and the court being of the opinion that the temporary restraining order heretofore granted, on the 22d day of January, 1908, should be continued in force until the final determination of this cause, and that the complainant is entitled to the injunction as prayed for in said bill;

It is, now, on motion of George B. Lester and Merrick and Barnard, solicitors for the complainant, ordered, adjudged and decreed by the court that the temporary restraining order heretofore issued in this cause on the 22d day of January, 1908,

be, and the same is, hereby continued in full force and effect until the final determination of this suit, or until the further (124) order of this court, and that the defendants and each of them, their agents, attorneys and employes, be, and they are, hereby restrained and enjoined from interfering with, paying out or transferring to any person or persons whomsoever, or in any way disturbing or changing the present status of the fund now in their control and possession, and from taking any steps with reference to said fund, tending to or which may put the same beyond the jurisdiction of this court; and,

It is further ordered that an injunction *pendente lite* issue in accordance with this order; and, it is further ordered that the motion of the complainant for a receiver of said fund be, and the same is, hereby continued, without prejudice to the right of the complainant to renew the said motion at any time, upon ten days notice to the said defendants, or any of them, or to their counsel of record,

This February 29th, 1908.

J. C. PRITCHARD,
U. S. Circuit Judge.

Appearance of W. J. Murray, et al.

(125) Filed March 2, 1908.

Telegram.

The Western Union Telegraph Company.

20 Ca. H. O. R. 40 paid. 443 p. m.

Received at 145 East Bay Street, Charleston, S. C., 1908.

Dated Columbia, S. C., 2 Mch.

To C. J. Murphy,
Clerk U. S. Circuit Court,
Charleston, S. C

Please enter our special appearance in the case of Fleischmann et al. against Murray et al. for defendants Murray, Henderson, McSween, Patton and Arthur, for the purpose of objecting to the jurisdiction of the court and for no other purpose.

ABNEY & MULLER.

Opinion.

(126) Filed 5th day of Mch., 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

The Fleischmann Company, Complainant,
versus
W. J. Murray et al., Defendants. } Opinion.

This is a suit in equity brought by the complainant to have the defendants declared trustees as to a certain fund in their hands, to determine the amount due to the complainant payable out of the said fund, and to compel the payment of the amount so found to be due.

The record shows that in 1892, the General Assembly of the State of South Carolina passed an Act regulating the purchase, sale and distribution of intoxicating liquors within said State, and providing for a board consisting of three members, to be known as the "Board of Directors of the State Dispensary." The said Act also provided for a Dispensary Commissioner to be elected by the General Assembly and made it the duty of the Board of Directors of the State Dispensary to purchase all alcoholic liquors for lawful use within the State, and to sell the same to the various county dispensaries, as provided in said act. The law further provided that all money arising from the sale of liquors by the Board of Directors of the State Dispensary should be deposited with the State Treasurer, to be held by him as a separate and distinct fund, and kept to the credit of the said Board of Directors of the State Dispensary. That the liquors purchased by the said Board of Directors of the State Dispensary should be paid for out of this fund upon a warrant to be issued by the said Dispensary Commissioner, such warrant to be issued by the Dispensary Commissioner at the direction of the said Board of Directors of the State Dispensary, and no part of this fund could be lawfully paid out by the State Treasurer, except upon warrants issued.

(127) That while said law was still in force, the complainant sold to the board of directors of the State Dispensary, at prices mutually satisfactory and agreed upon, a large quantity of whiskey and other spirituous liquors, all of which whiskey and spirituous liquor, except a small portion of which was afterwards returned by the defendants, were duly accepted and sold by the said directors of the State Dispensary at a substantial profit, in accordance with the dispensary law, and the proceeds

of such sales were in due course of administration, deposited in and became a part of the fund hereinbefore referred to.

That the General Assembly of the State of South Carolina, at its session held in 1907, passed an act providing for the abolition of the State Dispensary, which act was duly approved on the 16th day of February, 1907, and section 47 of which is as follows:

"Section 47: The State Dispensary is hereby abolished, and all acts and parts of acts inconsistent with this act, are hereby repealed; Provided, That this act shall not have the effect of preventing any violation of the present criminal law relating to the Dispensary being punished as now provided by law for offenses heretofore committed."

That at the same session of the General Assembly, of the State of South Carolina passed another Act entitled "An Act to Provide for the Disposition of all property connected with the State Dispensary and to wind up its affairs," which said Act is in words and figures as follows:

"Session Laws, S. C., 1907.

"No. 402.

"An Act to provide for the disposition of all property con-
(25) nected with the State Dispensary, and to wind up its affairs.

"Sec. 1. Be it enacted by the General Assembly of the State of South Carolina that immediately upon the approval of this act, the Governor shall appoint a Commission of well known business men, consisting of five members, none of whom shall be members of the General Assembly, to be known as the State Dispensary Commission, who shall each give bond for the faithful performance of the duties required, in the sum of $10,000.

"Sec. 2. Said Commission shall immediately organize by the election of a Chairman and a Secretary from their number.

"Sec. 3. It shall be the duty of said Commission to close out the entire business and property of the State Dispensary, except real estate, and including stock in the several County Dispensaries by disposing of all goods and property connected therewith, by collecting all debts due and paying from the proceeds thereof all just liabilities at the earliest date practicable. Said Commission shall be at liberty to make such disposition upon such terms, times and conditions as their judg-

ment may dictate: *Provided*, that no alcoholic liquors or beers shall be disposed of within the State except to County Dispensary Boards, and all liquors illegally bought by the present management may be returned to the persons, firms or corporations, from whom purchased, and for determining the legality of said purchases, they are hereby authorized and directed to investigate fully the circumstances surrounding all contracts for liquors, and to employ such assistant counsel as may be approved by the Attorney General, and such expert accountants and stenographers, and any other person or persons the Commission may deem necessary for the ascertainment of any fact or facts con-
(129) nected with said State Dispensary and its management or control at any time in the past, and to take testimony, either within or without the State; *Provided, further*, that all payments shall be made in gold and silver coin of the United States, in United States Currency or in national bank notes.

"Sec. 4. The compensation of each member of said Commission shall be $5.00 per day for each day actually employed about the business and actual expenses for the time engaged. *Provided*, that they shall receive no compensation for services rendered on this Commission after January 1st, 1908.

"Sec. 5. The said Commission shall pay to the State Treasurer, after deducting their compensation and other expenses allowed by this Act, all surplus funds on hand after paying all liabilities.

"Sec. 6. The said Commission is hereby authorized to employ such bookkeepers, accountants, clerks, assistants and employes as they may deem necessary, and to contract with them at the time of employment for their compensation.

"Sec. 7. The said Commission shall submit to the Governor at the earliest day practicable, a complete inventory of all property received by them, with a statement of the liabilities of the State Dispensary, and, as soon as the affairs are liquidated, a report in full of their actings and doings.

"Sec. 8. That said Commission shall have full power and authority to investigate the past conduct of the affairs of the Dispensary, and all the power and authority conferred upon the Committee Appointed to Investigate the Affairs of the Dispensary,as prescribed by an Act to Provide for the Investigation of the Dispensary, approved January 24th, A. D., 1906, be and hereby is, conferred upon the Commission provided for under this Act; provided, that for purpose of the investigation

of the affairs of the Dispensary as herein provided, each and every members of said Commission be and hereby is, authroized and empowered, separately and individually, or collectively, to exercise the power and authority herein conferred upon the whole Commission.

"Approved, the 16th day of February, A. D., 1907."

This Act was approved on the same day as the Act abolishing the State Dispensary, to-wit: the 16th of February, 1907, and within a short time thereafter, the Commission provided (130) for was created by the appointment of the defendants, W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, as Commissioners, and said defendants having duly qualified and organized pursuant to the said Act, became and do now constitute the State Dispensary Commission and as such are charged with the execution of all the powers conferred and the performance of all the duties imposed upon said Commission by the said Act.

That immediately upon their qualification as Commissioners, and organization as the State Dispensary Commission, the defendants entered upon the discharge of their duties, and, in accordance with the Act providing for their appointment, took possession and control of the entire business and property of the State Dispensary, including the money which was at that time deposited with the State Treasurer to the credit of the Board of Directors of the State Dispensary, and said defendants, have sold the property of said State Dispensary, except real estate, and collected many of the debts due to the said Dispensary, and now have in their hands the proceeds arising from said sales and collections, which, together with the sum received from the State Treasurer, amount to about eight hundred thousand dollars.

That all the money realized from the sale of the property of the said State Dispensary and the collection of debts due to it, has been from time to time, as received by the defendants constituting the State Dispensary Commission, and now is deposited to the credit of said Commission in certain banks in the State of South Carolina, subject to withdrawal only by said Commission, and no part of said money is in the Treasury of the State of South Carolina, or has ever been mingled with any funds belonging to said State.

That the complainant furnished to the defendants, at their request, an itemized statement of its account against the State Dispensary which account has been compared with the books kept by the State Dispensary and found to be in substantial

agreement with said banks. That complainants' account has (131) also been audited by the company employed by the defendants for that purpose, and the complainant insists that, in accordance with said audit and the books of said State Dispensary, its account is correct, and that there is now justly due and owing to it, out of the funds in the hands of the defendants, directed to be applied to the payment of the just liabilities of the State Dispensary, a balance of $66,501.10. Which balance is a just liability of the said State Dispensary, and although complainant has demanded said amount, the defendants have refused to pay the same or any part thereof.

Complainants ask that a receiver be appointed to take charge of and administer all the moneys now in the hands of the defendants, arising out of the sale of property belonging to the State Dispensary of South Carolina, or from the collection of debts due to it, or direct and decree that the amount due to complainant be immediately paid to it upon the execution of a good and sufficient bond conditioned to pay to defendants such sum or sums as may be found to be due to them by complainant and adjudged to be paid by it; that this court appoint a master with a view of having its claim passed upon and determined, and also requests this court to grant a writ of injunction restraining the defendants from paying out or disposing of any of the moneys now in their hands until there can be an adjudication of the matters in controversy between complainant and defendants.

It is contended by counsel for defendants, first, that the funds in the hands of the State Dispensary Commission, created by the Act of February 16th, 1907, belong to and are the property of the State, which has the right to control the same, and which, through the said Commission as its agent, is in possession thereof.

Second. That the said State Dispensary Commission is the mere agent or instrumentality of the State vested with the ministerial function of winding up the State Dispensary's business, selling the goods and property on hand, collecting the debts due the State in connection with said business and holding the proceeds for the State and subject to its right of dispo- (132) sition thereof. And also with the judicial function of investigating all claims in connection with said business, and determining the validity thereof, and that this Commission is a court within the meaning of section 720 of the Revised Statutes of the United States.

And also vested with the ministerial function of paying from the funds held by them for the State such of the said

claims as they may upon said investigation find and decide to be just liabilities of the State.

Third. That the pending action is in effect an action against the State, because it seeks to lay hold of funds belonging to the State and in the hands of said commission, as its agent, and through the said Commission in the possession of the State, and further seeks to have such funds applied to the payment of alleged liabilities of the State.

So that the State is an indispensable party to the action.

Fourth. That the State cannot be held to have waived its constitutional immunity from suit by the said act creating the "State Dispensary Commission," except to the extent of the remedies therein provided for and allowed to claimants for the collection of such debts as may be due them by the State in connection with its said Dispensary business, and, therefore, such claimants are limited to the remedies therein provided for and allowed.

Fifth. That the said act creating the State Dispensary Commission having been passed and the remedies therein provided for having been allowed, as a purely voluntary matter on the part of the legislature of the State, the said act is subject to be repealed and the allowance of the remedies therein provided for is subject to be recalled at any time at the pleasure of the legislature and in its discretion."

Counsel representing the defendants do not agree as to the contention that this commission is a court within the meaning of section 720,—one of the distinguished counsel being of the opinion that this commission is not a court within the meaning of that section. The court has carefully considered the arguments on this point, and, after much investigation, has reached the conclusion that the contention of the defendants (133) in this respect is untenable. It is admitted that the commission does not have the power to enter final judgment or to issue an execution, and while it is invested with certain powers, they are not to any appreciable extent judicial in their character. The authority conferred upon them to make inquiry is only for their own information and guidance and does not confer upon them the power to judicially determine the matters submitted to them, and, this being so, the court is forced to the conclusion that it is not a court according to the well defined meaning of the term.

The next question is as to whether this is a suit against the State or whether it is a suit to which the state is an indispensable party, and in order to reach a correct determination of this

question, it becomes necessary to inquire as to the nature and character of the duties required to be performed by the defendants under the act authorizing their appointment.

The defendants are charged with the duty of settling and adjusting the unsettled claims against the State Dispensary at the time it was abolished, and are required by the provisions of the act hereinbefore mentioned to ascertain*ed* and pay such sums as may be found to be due the several creditors of the State Dispensary.

These defendants are not officers of the state within the meaning of the ordinary acceptation of the term. If officers at all, they are officers appointed solely for the purpose of performing specific duties. In the case of *W. U. Tel. Co.* v. *Myatt*, 98 Fed. Rep., 335, the court says: "The act of the legislature creating the court of visitation and the act extending the powers and jurisdiction thereof to telegraph companies cast upon the officials who are defendants in this suit the special duty of administering and enforcing said laws. Their officers were created solely for such purposes, and such defendants are not general officers of the state, whose duty it is to see to the enforcement of laws generally, and who act only by formal judicial proceedings in the courts of the state. This suit, (134) therefore, is not against the state of Kansas, and hence is not within the prohibition of the eleventh amendment to the Constitution of the United States."

By this suit it is sought to enforce the rights of complainant in accordance with the provisions of the act in question. The object of this suit is not to coerce the defendants into doing something which the state law forbids them doing, but to compel them to do what the state statute requires shall be done.

At the time that the state dispensary was abolished, state dispensary funds to the amount of about $150,000 were on deposit in the state Treasury, and there was property connected with the state dispensary and a large amount due to it for goods which had been sold to the county dispensary. The defendants have sold the property and collected a large number of the debts, the proceeds arising from such sales and collections amounting to about $650,000, which, together with the $150,000 received from the State Treasurer, makes a total of about $800,000. The amount of money in the state treasury belonging to the dispensary fund, as well as the amount realized as hereinbefore stated, was turned over to the defendants and by them placed to their credit in a number of banks in the state. This sum was placed in their banks for the specific purpose of carrying out the provisions of the act, to-wit: The adjustment and settlement of the claim of complainant and those who were similarly situated.

It is obvious, from a careful reading of the statute, that the legislature intended that this fund should be treated as a special trust fund arising out of the operation of the State Dispensary, to be used primarily for the purpose of settling all just liabilities incurred by the state dispensary in the purchase of goods during its existence. The purpose sought to be accomplished by the legislature was the payment of the outstanding indebtedness of the state dispensary, as well as the disposal of its property and to wind up its affairs as a business concern.

The fact that this money was realized from the sale of goods purchased from the creditors of the state dispensary, when considered in connection with the action of the state legis-
(135) lature, in placing the entire funds in the hands of the defendants for the purpose hereinbefore mentioned, clearly constitutes this a trust fund in the hands of the defendants, as trustees who are charged with the duty of carrying out the purposes of the act.

While it is estimated that the state dispensarys' indebtedness amounted to only about $600,000 yet the legislature provided that all the funds, amounting to $800,000 should be placed under the dominion and control of the defendants, thus clearly indicating that it was the intent of the legislature that every dollar of the funds realized from the State Dispensary was to be treated as a trust fund first for the purpose of settling these claims, and then providing that any surplus remaining should be paid into the state treasury as funds properly belonging to the state.

This action on the part of the legislature is significant, and clearly indicates that the chief object in appointing the commission was to provide for the payment of claims similar to that of complainant. The legislature having authorized these defendants to withdraw the funds in the hands of the state treasurer, thereby surrendering the states' possession, of the same, for the purpose hereinbefore mentioned, shows most conclusively that this fund was intended to be treated as a trust fund and was to be used by the defendants for the purpose of carrying out the provisions of the act under which they were appointed.

It cannot be reasonably insisted, in view of these circumstances that the state is an indispensable party to this suit, inasmuch as it is not necessary that the state should be a party in order that there may be a final determination of the matters involved in this controversy. Therefore this is not a suit against the state within the meaning of the eleventh amendment.

The principal question involved in this controversy is as to whether the claim of complainant is a just liability against the State Dispensary. If it should be determined to be a just

(136) liability, the statute in question makes it the duty of the defendants to pay it, and, under these circumstances, the question sought to be litigated is one in which the state is not interested in the sense contemplated by the eleventh amendment.

In the case of *Louisiana* v. *Jumel* and other like cases, it was sought to compel the state officers to perform a duty either not directed to be done by the statute, or prohibited by it, or to enforce payment out of general funds, or where there was no special fund which the state itself had appropriated to and charged with its payment.

In the case of *Rolston* v. *Missouri*, 120 U. S., the court said:

"There (in the Jumel case) the effort was to compel a state officer to do what the statute prohibited him from doing. Here the suit is to get a state officer to do what the statute requires of him."

The court in a further discussion of this subject, said:

"It is next contended that this suit cannot be maintained because it is in its effect a suit against the State, which is prohibited by the eleventh amendment of the Constitution of the United States, and Louisiana *v.* Jumel, 107 U. S., 711, is cited in support of this position. But this case is entirely different from that. There the effort was to compel a state officer to do what a statute requires of him. The litigation is with the officer, not the state. The law makes it his duty to assign the liens in question to the trustee when they make a certain payment. The trustees claim that they have made this payment. The officer says they have not, and there is no controversy about his duty if they have. The only inquiry is, therefore, as to the fact of a payment according to the requirements of the law. If it has been made, the trustees are entitled to their decree. If it has not, a decree in their favor, as the case now stands, must be denied; but as the parties are all before the court, and the suit is in equity, it may be retained so as to determine what the trustee must do in order to fulfill the law, and under what circumstances the Governor can be compelled to execute the assignment which has been provided for."

(137) This principle is fully sustained in the cases of
Osborn *v.* Bank, 9 Wheat., 738;
Board of Liquidation *v.* McComb, 92 U. S., 531;
Pennoyer *v.* McConnaughy, 140 U. S., 1;
Reagan *v.* Farmers Loan & Trust Co., 154 U. S., 389;
Scott *v.* McDonald, 165 U. S., 112;
Tindal *v.* Wesley, 167 U. S., 220.

The failure of the defendants to comply with the statute cannot be treated as a refusal of the state to comply with the statute. On the contrary, it is a refusal on the part of the defendants to do that which they have been directed to do by the statute. Therefore a suit instituted against the defendants for the purpose of requiring them to perform the duties enjoined upon them by the statute is a suit against them as individuals and is not in any sense a suit against the state.

As hereinbefore stated, it is insisted by counsel for the defendants that the commissioners are vested with discretion and judgment to pass upon the question as to whether or not the claims of creditors are just and valid, and that, therefore, this court cannot interfere with such judgment or discretion. The rule that courts will not control an officer in the exercise of discretion conferred upon him is subject to qualification, and this is especially true in a court of equity when its exercise affects individual rights.

It is well settled that the courts have the power to prevent an abuse of discretion and require that it is exercised according to law and in such manner as not to unjustly injure property rights.

"Auditing officers will be required by mandamus to make their audit according to law. If the compensation is fixed by statute or agreement, they will be required to audit the compensation so fixed. If they have already audited an account for a less sum than that fixed by statute or agreement, they will be required to set aside the audit already made and to reaudit according to law." Amm. & Eng. Enc. Law, (1 Ed.), Vol. 14, 149, *People* v. *Elmira Auditors*, 82 N. Y., 80.

(138) The act authorizing the appointment of these commissioners does not undertake to give to them discretion as to what claims to pay, but expressly directs them to pay all just liabilities. Hence, it follows, that if a claim is just, their duty is mandatory and they possess no judgment or discretion as to its performance.

It appears from the allegations of the bill that these defendants already exercised the discretion with which they are invested by auditing and adjusting several accounts claimed to be due.

It is alleged in the bill, and admitted by the return, that the claim of the complainant has been audited by the company employed by the defendants for that purpose and has been found to correspond with the books kept by the state dispensary board.

Among other things, it is charged in the bill that the defendants have improperly managed the funds placed in their

hands. A careful consideration of the evidence fails to sustain this contention, it clearly appearing that these defendants have done no wrong in that respect, and that they are gentlemen of high character and standing.

It is insisted by counsel for defendants that this suit is instituted solely with a view of avoiding an investigation of the transactions between the state dispensary and the complainant and other creditors in the purchase of whiskey and other spirituous liquors. This contention is unfounded, inasmuch as this court will afford every opportunity for a complete and thorough investigation of any and all transactions connected with the former management of the state dispensary in the purchase of the goods the payment for which is now sought.

While the Supreme Court of South Carolina has decided that the act authorizing the establishment of the state dispensary and the purchase and sale of whiskey by the state was constitutional, it cannot be reasonably contended that in so doing the state was performing the functions usually exercised by a state necessary to preserve its autonomy and maintain its sovereignty. Nor can it be assumed that it was contemplated, at the time of the adoption of the eleventh amendment that a (139) sovereign state would ever engage in the purchase and sale of spirituous liquors for profit.

The state having seen fit to engage in this business, and at the same time to deprive its citizens of the right to engage in such business in competition with the state, thereby placed itself in a position where it could not with consistency, avail itself of the immunity conferred by the eleventh amendment in a suit like the one at bar which it is sought to collect a debt contracted by the individuals placed in control of such business with implied, if not direct, authority to contract such debts.

Having deprived its citizens of the rights to engage in this particular line of business, reserving the right to monopolize the same through its agencies appointed for that purpose, it would be manifestly unjust to permit the state, under any circumstances whatsoever to avoid the payment of debts contracted by the purchase of goods from the sale of which it has derived enormous profits.

And even if this were a suit against the state treasurer instituted for the recovery of funds set apart for the express purpose of paying the indebtedness thus contracted, as in this instance, it might well be questioned as to whether such officer could claim immunity under the eleventh amendment.

However, the court does not undertake to pass upon this phase of the question, inasmuch as the record shows that this is not a suit against a state official, or in any sense such a suit as is contemplated by the eleventh amendment.

For the reasons hereinbefore stated, the court is of opinion that it has jurisdiction and that the injunction heretofore issued should be continued to a final hearing.

At the time this opinion was announced, counsel stated in open court that the Attorney General of South Carolina had made application to the Supreme Court of that State for a mandamus to compel the defendants to pay over the sum of $15,000 (that amount being appropriated by an Act of the legislature, out of this fund to the use of the Attorney General) the (140) same to be used in prosecuting parties charged with violation of the law in connection with the management of the state dispensary. This action on the part of the attorney General, is in the nature of a surprise and was entirely unnecessary, inasmuch as this court, if proper application had been made by the defendants or the attorney general, would have gladly authorized the use of the same for such purpose, inasmuch as it appears that after the payment of this amount there would remain in the hands of the defendants funds amply sufficient to satisfy all claims involved in this controversy. This seems to be an unwarranted attempt to provoke a conflict of jurisdiction between this court and the state courts of South Carolina.

J. C. PRITCHARD,
U. S. Circuit Judge.

March 3rd, 1908.

Affidavit of George B. Lester.

(141) Filed March 9th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT, AT CHARLESTON.

The Fleischmann Co. vs. W. J. Murray et al. } Affidavit of Geo. B. Lester.

Geo. B. Lester, being first duly sworn, deposes and says that he is the general counsel for the above named plaintiff, and in the absence of time to have this affidavit made by one of its officers, makes the same in its behalf.

That as affiant is informed and believes, on Thursday, the 5th day of March, 1908, the Governor of the State of South Carolina sent a message to the Legislature of said State, which is now in session, copy of which message taken from the State, a newspaper published at Columbia, in said State, and which

affiant is informed and believes is a true copy of said message; that affiant is further informed and believes that acting upon such message, there has been introduced in the General Assembly of said State a bill directing the State Dispensary Board to turn the funds in their hands into the State Treasury of said State, said funds being the same enjoined by this court from being in any way paid out or changed until its further order.

That as affiant is advised and believes there is danger thus arising of said funds being placed beyond the jurisdiction of this court and plaintiff prevented from recovering the amounts justly due it from the defendants, and otherwise irreparably damaged, unless this court take said fund immediately into its actual possession by the appointment of receiver or receivers therefor.

GEO. B. LESTER.

Sworn to and subscribed before me this March 6th, 1908.

[Seal] W. S. HYAMS,
Clerk U. S. Circuit Court, Asheville, N. C.

(142) The defendants desire to have the application for the appointment of a receiver in this case and the application for the appointment of a receiver in the case of Wilson Distilling Co. et al. *vs.* W. J. Murray et al., heard together and to that end, the defendants without waiving jurisdiction rights waive the days notice of an intention to apply for the appointment of a receiver in the former case. This March 6th, 1908.

J. FRASER LYON, Attorney-General,
ABNEY & MULLER,
ANDERSON, FELDER, ROUNDTREE & ANDERSON,
Attorneys for defendants, W. J. Murray and others, Commissioners and as individuals.

(143) ANSEL TAKES A HAND.

Calls upon the Legislature to take steps to protect the Autonomy of the State against Foreign Intervention.

Gov. Ansel has taken a hand in the controversy between the State Authorities and Judge Pritchard of the Federal Court.

Last night he sent a special message to the General Assembly urging that action be taken to protect State Sovereignty.

Following is his special message:

To the Honorable the Senate and House of Representatives of South Carolina:

Owing to the fact that the funds of the State of South Carolina which are now in the hands of the Commission to wind up the State Dispensary are sought to be taken from their hands and to be administered by the United States Court, without the consent of your honorable bodies, the only department of the State Government which has the right to give consent that the State be sued.

And as the Autonomy of the State must be maintained and the rights to administer her funds by her own agents preserved; and feeling that you realize the great principle of State Sovereignty and the rights of a State under the constitution of the United States,

I respectfully recommend such legislation, at this session of the Legislature as will protect the interests of the State and obviate the necessity for further action on your part.

Respectfully,

M. F. ANSEL, Governor.

Executive Chamber, Columbia, S. C., March 5th, 1908.

Affidavit of George B. Lester.

(144) Filed March 9th, 1908.

UNITED STATES OF AMERICA, DISTRICT OF SOUTH CAROLINA,
IN THE CIRCUIT COURT OF THE UNITED STATES,
FOURTH CIRCUIT. IN EQUITY.

The Fleischmann Co., Complainants,
vs.
W. J. Murray et al., Defendants.

George B. Lester, being duly sworn, deposes and says:

That he is an attorney and counsellor at law, residing in the City of New York, State of New York, and is General Counsel for the Fleischmann Company, a corporation having its principal office in the City of Cincinnati, State of Ohio;

that on behalf of the Fleischmann Company, and various other creditors, he appeared before the South Carolina State Dispensary Commission on various occasions during the months of December, 1907, and January, 1908, for the purpose of effecting a compromise or settlement of the claims of the Fleischmann Company against the State Dispensary funds, as well as a settlement of the claims of the other creditors represented; that for some time prior to the 14th day of January, 1908, deponent had been in the City of Columbia, and has thoroughly familiarized himself with the conditions surrounding the liquidation of the State Dispensary affairs by the present Commission; that subsequent to the last mentioned date, deponent has made or caused to be made, various investigations, to ascertain, if possible, the reasons why the present Commission has refused to pay the creditors' claims; that deponent is informed and believes that, some months prior to the 2d day of January, 1908, negotiations were entered into by the Attorney General on behalf of this Commission, with one Thomas B. Felder, Attorney at Law, of Atlanta, Georgia, for the rentention of the said Mr. Felder, or his firm, or both, to assist the Attorney General, in the gathering of evidence against alleged criminals or suspects in the State of South Carolina, who were connected (145) with the affairs of the late Dispensary boards; that, pursuant to these negotiations, a tentative agreement was entered into between the Attorney General representing this Commission, and the said Mr. Felder, or his firm, by the terms of which Mr. Felder, or his firm, were to gather evidence of alleged criminal conduct on the part of the officials of the late State Dispensary, and also to collect evidence as to alleged overcharges on goods sold by claimants to the Dispensary, in order to reduce or cut down the amounts of the various creditors' claims when the same came on for adjustment before this Commission. Deponent is informed and believes that, on the 2d day of January, 1908, a formal agreement was entered into between the Attorney General and this Commission, upon the one side, and the said Mr. Felder, and his firm, upon the other side, by the terms of which agreement and in consideration of the production of evidence by the said Mr. Felder, or his firm, tending to show alleged overcharges for goods sold to the Dispensary by various claimants and for other considerations, the Commission agreed to pay to the said Mr. Felder and his firm a commission or percentage of ten per cent., or upwards, upon all sums deducted from the claims of the various claimants, and to turnover to the said Mr. Felder and his firm, complete charge of the adjustment of the creditors' claims before this Commission; that, pursuant to that agreement, although this Commission had, prior to the last mentioned date, agreed to

settle the claims of all creditors upon their appearances before the Commission and the production of the their sales books, this Commission did, on the 14th day of January, 1908, turn over to the said Mr. Felder and his associates, the complete management of the proceedings before their body, so far as the adjustment of creditors' claims was concerned, and Mr. Felder, pursuant to the agreement before mentioned, has, since that date, represented the Commission in the various hearings before them upon creditors' claims. That deponent is informed and believes that it has been the intention and policy of this Commission, acting through their attorney, Mr. Felder to cut (146) down and reduce claims of creditors as much as possible, irrespective of the justice of said claims; that these proceedings had been conducted in total disregard of the rules of law and evidence; that claims have been cut down by alleged overcharges in an arbitrary and unreasoning manner, said Commission being advised by said attorneys that their proceedings in this regard were legal and proper; that cases have been heard before this Commission without due and proper notice to the claimants, and it now appears that the Commission acting upon the advice of Mr. Felder, have adjusted and settled certain claims aggregating upwards of $100,000, upon an arbitrary percentage deduction of 6 per cent., which said claims were represented by Mr. Lawrence Maxwell, an attorney of the City of Cincinnati, that this action has been taken by the Commission upon the advice of Mr. Felder and his associates, although it appears of record in the proceedings in the Fleischmann case, that the *the* same offer of settlement was made on behalf of many of those same creditors by this deponent to this Commission on or about the 20th day of December, 1907, and before any suit or suits were instituted against said Commission, and before any expenses had been incurred by the employment of attorneys, or otherwise, or were necessary for the adjustment of these claims. Said offer of settlement heretofore made by this deponent on the date mentioned appears in the Fleischmann suit as an exhibit offered on behalf of the defendants, in opposition to the appointment of a Receiver and the issuance of an injunction, being document No. 6 filed in that case on January 29th, 1908. That deponent is informed and believes that a systematic effort is being made by certain advisers of this Commission to place these funds beyond the jurisdiction of this court. Deponent further states that he believes that the members of this Commission have intended and do now intend to do what they conceive to be their duty in the management of the funds in their possession, but the gentlemen comprising this Commission are none of them attorneys, and are unfamiliar with law or the rules of evidence, and have

(147) acted, and must necessarily act, upon the advice of their legal representatives; that deponent is informed and believes that, in a mistaken sense of duty to the State, they have committed various breeches of their trust, and that they are now in a position where they cannot properly carry out their obligations to the creditors.

For the reasons above stated, deponent believes that it is to the best interest of creditors, as well as to the best interests of this commission that a receiver be appointed in this court to administer the funds held in trust for the benefit of the creditors.

GEORGE B. LESTER.

Sworn to and subscribed before me this 7th day of March, 1908.

FRANK D. BOOKHAM, [L. S.]
Notary Public, Buncombe Co., N. C.
My commission expires 7th Fed., 1910.

Order Granting Leave to File Amended and Supplemental Bill.

(148) Filed Feb. 24, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT, AT CHARLESTON.

Wilson Distilling Company et al., Complainants,
vs.
W. J. Murray et al., Defendants. } In Equity.

Order.

Upon motion of solicitors for complainants, it is ordered that The National Loan and Exchange Bank, The Palmetto National Bank, The Columbia Savings and Trust Company, all of Columbia, in the State of South Carolina, The Bank of Timmonsville, of Timmonsville, in said State, The People's Bank of Union, of Union, in said State, The Bank of Aiken, of Aiken, in said State, The Piedmont Savings and Investment Company, of Greenville, in said State, The Merchants' and Farmers' Bank, of Cheraw, in said State, and The Bank of Camden, of Camden, in said State, be and they and each of them hereby are made parties defendant in this cause, and it is hereby ordered that subpœnas issue for said parties according to the course and practice of this court.

And it is further ordered that the complainants have leave to file an amended and supplemental bill of complaint in this

cause, the same to relate and have affect, so far as may be, as of the date of the filing of the original bill of complaint herein.

This the 19th day of February, 1908.

(Signed) J. C. PRITCHARD,
U. S. Circuit Judge.

Amended and Supplemental Bill of Complaint.

(149) Filed Feb. 24, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT, AT CHARLESTON.

Wilson Distilling Company, Anheuser-Busch Brewing Association and Charles J. Gallagher, Jr., and Edward Burton, Partners as Gallagher & Burton, and John M. Cranston, trading as Jack Cranston Company, Complainants,
vs.
W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson, Avery Patton, The National Loan and Exchange Bank, of Columbia, South Carolina; The Palmetto National Bank, of Columbia, South Carolina; The Columbia Savings and Trust Company, of Columbia, South Carolina; The Bank of Timmonsville, of Timmonsville, South Carolina; The People's Bank of Union, of Union, South Carolina; The Bank of Aiken, of Aiken, South Carolina; The Piedmont Savings and Investment Company, of Greenville, South Carolina; The Merchants' and Farmers' Bank, of Cheraw, South Carolina, and The Bank of Camden, of Camden, South Carolina, Defendants.
} In Equity.

(150)

To the Honorable the Judges of the Circuit Court of the United States for the District of South Carolina:

Wilson Distilling Company, a corporation duly created, organized and existing under and by virtue of the laws of the

State of New Jersey, and a citizen and resident of said State, Anheuser-Busch Brewing Association, a corporation duly created, organized and existing under and by virtue of the laws of the State of Missouri, and a citizen and resident of said State, and Charles J. Gallagher, Jr., and Edward Burton, partners as Gallagher & Burton, both citizens and residents of the State of Pennsylvania, and John M. Cranston, trading as Jack Cranston Company, a citizen and resident of the State of Georgia, by leave of the court bring this their amended and supplemental bill of complaint against W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, constituting the State Dispensary Commission of the State of South Carolina, and said defendants individually, all of whom are citizens and residents of said State of South Carolina, and the following named corporations, to-wit: The National Loan and Exchange Bank, of Columbia, South Carolina, the Palmetto National Bank, of Columbia, South Carolina, The Columbia Savings and Trust Company, of Columbia, South Carolina, The Bank of Timmonsville, of Timmonsville, South Carolina, The People's Bank of Union, of Union, South Carolina, The Bank of Aiken, of Aiken, South Carolina, The Piedmont Savings and Investment Company, of Greenville, South Carolina, The Merchants and Farmers Bank, of Cheraw, South Carolina, and the Bank of Camden, of Camden, South Carolina, all of whom are citizens and residents of the State of South Carolina; and there-
(151) upon your orators complain and say:

1.

That your orator, Wilson Distilling Company, at all times hereinafter mentioned was, and still is, a body corporate under the laws of the State of New Jersey, and is a citizen and resident of the said State of New Jersey, having its principal place of business in the City of Baltimore, in the State of Maryland; that your orator, Anheuser-Busch Brewing Association, at all times hereinafter mentioned was, and still is, a body corporate under the laws of the State of Missouri, and is a citizen and resident of said last mentioned State, having its pricipal place of business in the City of St. Louis, in the State of Missouri; that your orators, Charles J. Gallagher, Jr., and Edward Burton, partners as Gallagher & Burton, at all times hereinafter mentioned were, and still are, citizens and residents of the State of Pennsylvania; and your orator John M. Cranston, trading as Jack Cranston Company, at all times hereinafter mentioned was and still is a citizen and resident of the State of Georgia; and that all said complainants are citizens of the United States

and of the States in which they respectively reside, as aforesaid.

2.

That the defendants, and each and every of them, are citizens and residents of the State of South Carolina, the said W. J. Murray residing in the City of Columbia; the said John McSwen residing in the City of Timmonsville; the said B. F. Arthur residing in the City of Union; the said C. K. Henderson residing in the City of Aiken; the said Avery Patton residing (152) in the City of Greenville; the said The National Loan and Exchange Bank is a body corporate, residing and having its principal place of business in the City of Columbia; the said The Palmetto National Bank is a body corporate, residing and having its principal place of business in the City of Columbia; the said The Columbia Savings and Trust Company is a body corporate, residing and having its principal place of business in the City of Columbia; the said The Bank of Timmonsville is a body corporate, residing and having its principal place of business in the City of Timmonsville; the said The People's Bank of Union is a body corporate, residing and having its principal place of business in the City of Union; the said Bank of Aiken is a body corporate, residing and having its principal place of business in the City of Aiken; the said The Piedmont Savings and Investment Company is a body corporate, residing and having its principal place of business in the City of Greenville; the said the Merchants and Farmers Bank is a body corporate, residing and having its principal place of business in the City of Cheraw, and the said The Bank of Camden is a body corporate, residing and having its principal place of business in the City of Camden, all in the State of South Carolina.

3.

That the matter in controversy in this action exceeds in amount and value the sum of two thousand dollars, exclusive of interest and costs, as will hereinafter more fully appear.

4.

Your orators further show that the General Assembly of the State of South Carolina, at its regular session of 1892 passed an Act entitled *"An Act to prohibit the manufacture and sale of intoxicating liquors as a beverage within this State, except as herein provided,"* the same being Act No. 28 of said (153) Session, which was duly approved December 24th, 1892, which said Act is hereby expressly referred to, and asked

to be taken as a part hereof; said Act provided *inter alia* "That on and after the 1st day of July, A. D., 1893, the manufacture, sale, barter or exchange, or keeping or offering for sale, barter, trade or exchange within this State of any spiritous, malt, vinous, fermented or other intoxicating liquor, or any compound or mixtures thereof, by whatever name called, which will produce intoxication, by any person, business firm, corporation or association shall be regulated and conducted as provided in this Act;" and provided further for a Board consisting of three members, to be known as the State Board of Control, and also provided for the appointment of a Commissioner, who was required, under such rules and regulations as might be made by said State Board of Control, to purchase all *alcholic* liquors for lawful use within said State, and to sell the same to the various County Dispensaries as provided in said Act. Said Act further provided that all money arising from the sale of liquors by the said Commissioner should be deposited with the State Treasurer, to be held by him as a separate and distinct fund, with which fund the said Treasurer was required to keep a separate account, and further provided that the expenses incurred in conducting said business should be paid out of said fund upon warrants drawn by said Commissioner and duly approved by said State Board of Control, and no part of said fund could be lawfully paid out by said Treasurer, except upon warrants so issued.

The business and monopoly thus established became known and was thenceforth recognized in the legislation of said State as the State Dispensary. By subsequent legislation amendatory of said Act of 1892, the method of conducting the business of said State Dispensary underwent various changes; the Board of Directors of the State Dispensary was thereafter created, and upon it were devolved most, if not all, of the powers and duties of said State Board of Control and certain of the duties and powers of said Commissioner, including the duty and power (154) to purchase all alcoholic liquors and other supplies for said State Dispensary; but all moneys received from said business were always required to be kept and maintained as a separate and distinct fund, subject to be drawn upon for the purpose of paying the expenses incurred in the conduct of said business.

5.

And your orators further show that while the Act set out in the last preceding paragraph hereof, amended as aforesaid, was still in force, your orators severally duly sold to said Board of Directors of the State Dispensary, at prices mutually satisfactory and agreed upon, large quantities of alcoholic liquors,

which were duly accepted and sold by the said Directors of the State Dispensary at a substantial profit in accordance with said Act, and the proceeds of such sales were, in due course of administration, deposited in and became a part of the fund hereinbefore referred to, all which will hereinafter more fully appear.

6.

And your orators further show that afterwards, at its session held in the year 1907, the General Assembly of the State of South Carolina passed an Act providing for the abolition of said State Dispensary, which Act was duly approved on February 16, 1907, and Section 47 of which is as follows:

"Section 47. The State Dispensary is hereby abolished, and all Acts and parts of acts inconsistent with this Act are hereby repealed: Provided, that this Act shall not have the effect of preventing any violation of the present criminal law relating to the Dispensary being punished as now provided by law for offences heretofore committed."

That at the same session the said General Assembly of the State of South Carolina passed another Act, approved on the same day as said Act abolishing said State Dispensary, to-wit, February 16, 1907, entitled: *"An Act to provide for the dis-*
(155) *position of all property connected with the State Dispensary, and to wind up its affairs."* which said Act is in words and figures as follows:

"Session Laws, S. C., 1907.

"No. 402.

"An Act to provide for the disposition of all property connected with the State Dispensary, and to wind up its affairs.

"Sec. 1. Be it enacted by the General Assembly of the State of South Carolina that immediately upon the approval of this act, the Governor shall appoint a Commission of well known business men, consisting of five members, none of whom shall be members of the General Assembly, to be known as the State Dispensary Commission, who shall each give bond for the faithful performance of the duties required, in the sum of $10,000.

"Sec. 2. Said Commission shall immediately organize by the election of a Chairman and a Secretary from their number.

"Sec. 3. It shall be the duty of said Commission to close out the entire business and property of the State Dispensary, except real estate, and including stock in the several County Dispensaries by disposing of all goods and property connected therewith, by collecting all debts due and by paying from the proceeds thereof all just liabilities at the earliest date practicable. Said Commission shall be at liberty to make such disposition upon such terms, times and conditions as their judgment may dictate: *Provided*, that no alcoholic liquors or beers shall be disposed of within the State except to County Dispensary Boards, and all liquors illegally bought by the present management may be returned to the persons, firms or corporations, from whom purchased, and for determining the legality of said purchases, they are hereby authorized and directed to investigate fully the circumstances surrounding all contracts for liquors, and to employ such assistant counsel as may be approved by the Attorney General, and such expert accountants and stenographers, and any other person or persons the Commission may deem necessary for the ascertainment of any fact or facts con-
(156) nected with said State Dispensary and its management or control at any time in the past, and to take testimony, either within or without the State; *Provided, further*, that all payments shall be made in gold and silver coin of the United States, in United States Currency or in national bank notes.

"Sec. 4. The compensation of each member of said Commission shall be $5.00 per day for each day actually employed about the business and actual expenses for the time engaged. *Provided*, that they shall receive no compensation for services rendered on this Commission after January 1st, 1908.

"Sec. 5. The said Commission shall pay to the State Treasurer, after deducting their compensation and other expenses allowed by this Act, all surplus funds on hand after paying all liabilities.

"Sec. 6. The said Commission is hereby authorized to employ such bookkeepers, accountants, clerks, assistants and employes as they may deem necessary, and to contract with them at the time of employment for their compensation.

"Sec. 7. The said Commission shall submit to the Governor at the earliest day practicable, a complete inventory of all property received by them, with a statement of the liabilities of the State Dispensary, and, as soon as the affairs are liquidated, a report in full of their actings and doings.

(157)

"Sec. 8. That said Commission shall have full power and authority to investigate the past conduct of the affairs of the Dispensary, and all the power and authority conferred upon the Committee Appointed to investigate the Affairs of the Dispensary, as prescribed by an Act to Provide for the Investigation of the Dispensary, approved January 24th, A. D., 1906. be and hereby is, conferred upon the Commission provided for under this Act; provided, that for purpose of the investigation of the affairs of the Dispensary as herein provided, each and every members of said Commission be and hereby is, authroized and empowered, separately and individually, or collectively, to exercise the power and authority herein conferred upon the whole Commission.

"Approved, the 16th day of February, A. D., 1907."

That within a short time thereafter the Commission provided for in said Act was created by the appointment of the defendants, W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, as Commissioners, and said defendants having duly qualified and organized pursuant to the said Act, became, and do now constitute the State Dispensary Commission, and as such are charged with the execution of all the powers conferred, and the performance of all the duties imposed upon said Commission by the said Act.

7.

And your orators further show that immediately upon their qualification as Commissioners and organization as the State Dispensary Commission, the defendants entered upon the discharge of their duties, and in accordance with the Act providing for their appointment, took possession and control of the entire business and property of the said State Dispensary, including the money which was at that time deposited with the State Treasurer to the credit of the Board of Directors of said State Dispensary, and said defendants have sold the property of said State Dispensary, except real estate, and collected many of the debts due to the said State Dispensary, and now have in their hands, and deposited in the several defendant Banks, and in other depositories within the State of South Carolina, the names of which are unknown to your orators, the proceeds arising from said sales and collections, which, together with the sum so received from said State Treasurer amounts to about eight hundred thousand dollars ($800,000) as your orators are (158) informed and believe, and the sum so held in the hands

of said defendants is applicable to the payment of the just liabilities of said State Dispensary, and to the other uses and purposes designated in said Act.

8.

And your orators further show, that prior to the passage of said Acts of February 16, 1907, and while the said State Dispensary was still engaged in business, said complainant, Wilson Distilling Company, duly sold and delivered to it at prices which were entirely reasonable and mutually satisfactory, a large quantity of valuable alcoholic liquors, which were duly received and accepted by said State Dispensary, and have been sold and disposed of by it at a substantial profit; that said sales and deliveries were in all respects regular and legal, and were made upon orders properly and lawfully given by persons duly authorized to give such orders, and under a lawful contract, promise and agreement, that said complainant should be paid the prices charged therefor; by reason whereof, said State Dispensary became, and, at the time the defendants, Murray, McSween, Arthur, Henderson and Patton took charge of said business and property, was, and still is, justly indebted to said complainant in the just and full sum of twenty-nine hundred and seventy-nine and 12/100 dollars ($2,979.12); that no part of said sum has been paid, and that the same constitutes, in favor of said complainant, a just liability of said State Dispensary, and, by reason of the matters and things hereinbefore alleged, and particularly by the terms of said Act of February 16, 1907, last above mentioned, said fund in the hands of said defendants became, was and is impressed with a trust for the payment thereof, and said defendants, Murray, McSween, Arthur, Henderson and Patton were and are charged with the ministerial duty to pay the same to said complainant.

9.

(159) And your orators further show that, prior to the passage of said Act of February 16, 1907, and while the said State Dispensary was still engaged in business, said complainant, Anheuser-Busch Brewing Association, duly sold and delivered to it, at prices which were entirely reasonable and mutually satisfactory, a large quantity of valuable alcoholic liquors, which were duly received and accepted by said State Dispensary, and have been sold and disposed of by it at a substantial profit; that said sales and deliveries were, in all respects, regular and legal and were made upon orders properly and lawfully given by persons duly authorized to give such orders, and under a

lawful contract, promise and agreement, that said complainant should be paid the prices charged therefor; by reason whereof said State Dispensary became, and at the time of the passage of said Act, and at the time the defendants Murray, McSween, Arthur, Henderson and Patton took charge of said business and property was, and still is, justly indebted to said complainant in the just and full sum of nineteen thousand five hundred and fifty-one dollars ($19,551); that no part of said sum has been paid, and that said sum constitutes, in favor of said complainant, a just liability of said State Dispensary, and by reason of the matters and things hereinbefore alleged and particularly by the terms of said Act of February 16, 1907, last above mentioned, said fund in the hands of said defendants became, was and is impressed with a trust for the payment thereof, and said defendants Murray, McSween, Arthur, Henderson and Patton were and are charged with the ministerial duty to pay the same to said complainant.

10.

And your orators further show that, prior to the passage of said Act of February 16, 1907, and while the said State (160) Dispensary was still engaged in business, said complainants Charles J. Gallagher, Jr., and Edward Burton, partners as Gallagher & Burton, duly sold and delivered to it at prices which were entirely reasonable and mutually satisfactory a large quantity of valuable alcoholic liquors, which were duly received and accepted by said State Dispensary, and have been sold and disposed of by it at substantial profit; that said sales and deliveries were, in all respects, regular and legal, and were made upon orders properly and lawfully given by persons duly authorized to give such orders, and under a lawful contract, promise and agreement that said complainants should be paid the prices charged therefor; by reason whereof the said State Dispensary became, and at the time of the passage of said Act of February 16, 1907, and at the time the defendants, Murray, McSween, Arthur, Henderson and Patton took charge of said business and property, was, and still is, justly indebted to said complainants, which said indebtedness now amounts to the just and full sum and balance of five thousand three hundred and one and 41/100 dollars ($5,301.41); that no part of said sum has been paid, and that said sum constitutes in favor of said complainants, a just liability of said State Dispensary, and, by reason of the matters and things hereinbefore alleged and particularly by the terms of said Act of February 16, 1907, last above mentioned, said fund in the hands of said defendants became, was and is impressed with a trust for the payment

thereof, and said defendants, Murray, McSween, Arthur, Henderson and Patton, were and are charged with the ministerial duty to pay the same to said complainants.

11.

And your orators further show that, prior to the passage of said Act of February 16, 1907, and while the said State Dispensary was still engaged in business, said complainant, John M. Cranston, trading as Jack Cranston Company, duly (161) sold and delivered to it at prices which were entirely reasonable and mutually satisfactory, a large quantity of valuable alcoholic liquors, which were duly received and accepted by said State Dispensary, and have been sold and disposed of by it at a substantial profit; that said sales and deliveries were in all respects regular and legal, and were made upon orders properly and lawfully given by persons duly authorized to give such orders, and under a lawful contract, promise and agreement that said complainant should be paid the prices charged therefor; by reason whereof the said State Dispensary became, and at the time of the passage of said Act of February 16, 1907, and at the time the defendants, Murray, McSween, Arthur, Henderson and Patton took charge of said business and property, was, and still is justly indebted to said complainant in the just and full sum of five thousand nine hundred and fifty-one and 50/100 dollars ($5,951.50); that no part of said sum has been paid, and that said sum constitutes in favor of said complainant a just liability of said State Dispensary, and, by reason of the matters and things hereinbefore alleged, and particularly by the terms of said Act of February 16, 1907, last above mentioned, said fund in the hands of said defendants became, was and is impressed with a trust for the payment thereof, and said defendants, Murray, McSween, Arthur, Henderson and Patton were, and are, charged with the ministerial duty to pay the same to said complainant.

12.

And your orators further show, that, as they are informed and believe, the defendants, Murray, McSween, Arthur, Henderson and Patton, have received from the sale of the property of the said Dispensary and the collections of debts due it, and now have in their hands, on deposit in the defendant Banks and other Depositories, a large sum of money, amounting to eight hundred thousand dollars ($800,000) or thereabouts, and that said sum, if properly preserved and applied, will be amply sufficient to pay off and discharge the claims of your orators,

(162) and all other just liabilities of said State Dispensary, which said liabilities do not, as your orators are informed and believe, exceed the sum of six hundred and nine thousand dollars ($609,000.00), all which facts will more fully appear from the report made by said defendants to the Governor of the State of South Carolina, on or about the fourth day of January, 1908, to which report reference is hereby made.

13.

And your orators further show that as they are informed, advised and believe, the money received by the defendants, Murray, McSween, Arthur, Henderson and Patton, and held by them as hereinbefore alleged, having been placed in their possession for the specific purpose of paying all the just liabilities of the said State Dispensary, became, and now constitutes a trust fund in the hands of said defendants, and the said defendants hold the same as trustees for your orators, and the other creditors of the said State Dispensary, and said defendants became, were and are charged with the ministerial duty of paying all said just liabilities of said State Dispensary to your orators and to the other persons, firms, corporations and associations respectively entitled thereto.

14.

And your orators further show that all the money realized from the sale of the property of the said State Dispensary and the collection of debts due to it, pursuant to the provisions of the Act aforesaid, has been from time to time, as received by the defendants constituting the State Dispensary Commission, and now is, deposited to the credit of said Commission in the defendant Banks and other depositories in the State of South Carolina, subject to withdrawal only by said Commission, and no part of said money is in the treasury of the State of South Carolina, or has ever been mingled with any funds belonging to said State.

15.

(163) And your orators further show that said defendants, Murray, McSween, Arthur, Henderson and Patton, have abused and are abusing the trusts reposed in them as aforesaid in manner and the particulars following, that is to say:

(*a*) They have wrongfully and unlawfully failed and refused to pay the just claims of your orators and of other per-

sons, firms and corporations having just claims against the said State Dispensary and in and upon said trust funds, and have wrongfully and unlawfully failed and refused to pay the just liabilities of said State Dispensary at the earliest date practicable, as required by said Act of February 16, 1907.

(*b*) They have unlawfully, and for the wrongful purpose of avoiding, delaying and defeating the payment of the just liabilities of the said State Dispensary, denied their said trust, and denied that they owed any duty to the creditors of the said State Dispensary.

(*c*) They have wrongfully and unlawfully exceeded the powers conferred upon them by law and have usurped and presumed to exercise the powers of a court and have unlawfully attempted to arrogate to themselves exclusive jurisdiction of all claims against said State Dispensary and against the funds in their hands.

(*d*) The powers and functions so unlawfully and wrongfully usurped by them they have exercised in a partial, unfair and oppressive manner, and the hearings and proceedings had by them upon the claims of persons, firms and corporations who allege themselves to be creditors of said State Dispensary and to be entitled to share in said fund have not been designed chiefly, if at all, to ascertain the just liabilities of said State Dispensary, but have had for their principal purpose the provision of some more or less plausible excuse for refusing to pay the just liabilities of said State Dispensary and the procurement of evidence to be used by the Attorney General of said (164) State in his proposed criminal prosecutions of alleged dispensary grafters, so-called, and in furtherance of this latter design they have wrongfully required the attendance of non-resident persons as witnesses upon claims against said fund with the sole or principal object of enabling such Attorney General to have criminal process executed upon said persons while within the jurisdiction of said State in obedience to said requirement, and they have knowingly and wrongfully acquiesced in the wrongful refusal of the said Attorney-General to grant immunity from arrest to said non-resident persons while present in said State in obedience to said requirement, and at the same time have wrongfully refused to pass upon or allow such claims without the personal presence of such non-resident persons at their hearings within said State.

(*e*) They are wrongfully seeking, or they wrongfully acquiesce in other persons seeking for them, an amendment to

said Act of 1907, having for its purpose the legalizing of their usurpations of the powers and functions of a court, and their wrongful claim of exclusive original jurisdiction, as such court, of all claims against said Dispensary and against said fund in their hands, as aforesaid.

(*f*) They wrongfully seek, by the usurpations aforesaid and through the proposed legislation aforesaid, to place said funds beyond the reach of this court and every other regularly organized court of general jurisdiction, and thereby render it impossible for your orators and other persons having just claims against said State Dispensary and against said fund to realize anything upon their said claims, through any legal proceedings, or otherwise, except such amounts as they, in the exercise of the alleged exclusive jurisdiction aforesaid, may be pleased to allow to them.

(*g*) They deny the right of your orators and other persons having just claims against said Dispensary and against said fund to have their said claims litigated in a court of general jurisdiction, and are attempting, through the proposed legisla-
(165) tion aforesaid, to make such denial effectual.

And all and every the unlawful and wrongful acts and doings aforesaid they still continue and threaten to do, to the great wrong and irreparable injury of your orators.

16.

And your orators further show that said defendants, by their conduct and usurpations aforesaid, and through the proposed legislation aforesaid, seek to deny to your orators and all other persons having just claims against said State Dispensary and against said fund, the right of trial by jury guaranteed by the Constitution of the State of South Carolina; and they further seek to deprive your orators, and all other persons having just claims against said State Dispensary and against said fund, of their property without due process of law, and to deny to them the equal protection of the laws, in violation of their rights under the Constitution of the United States, and Article XIV., section 1, of the Amendments thereof, the protection whereof is hereby expressly claimed by your orators.

17.

And your orators further show that there are a large number of persons claiming to be creditors of the said State Dispensary and seeking to collect from the defendants various

sums ranging in amount from one, or a few, to many thousands of dollars; that some of said persons, for the purpose of compelling the payment of their debts, have already brought suit against said defendants, and others are, as your orators are informed and believe, threatening to institute similar actions; and if said defendants shall be required or permitted to defend a multiplicity of said suits in order to determine the validity of each claim against them, and shall be allowed to defer the payment of all claims until the final termination of said suits, a large part of the funds in their hands will be wasted in ex-
(166) pensive litigation and court costs, and a great wrong, injustice and injury will be done to your orators, and to all other persons having just claims against said State Dispensary and against said fund.

18.

Each and every allegation of fact in this bill of complaint contained is made upon the information and belief of the solicitor for the complainant by whom the same is verified.

19.

This suit is brought by your orators on their own behalf and on behalf of all other persons having just claims against said State Dispensary and against said fund in the hands of said defendants, who may hereafter desire to join herein and to contribute to the expenses hereof.

In consideration whereof, and for as much as your orators are without remedy and can obtain adequate relief only in a court of equity, and to the end that the defendants may be prevented from committing further wrongs and trespasses against the rights of your orators, and for the purpose of preserving the fund in the hands of the defendants and of enforcing the rights and equities of your orators in the same, and preventing further waste, loss and damage by reason of the facts alleged in this bill, your orators pray:

(1) That this Honorable Court will forthwith appoint a receiver to take charge of and administer as a trust fund all the money now in the hands of the defendants arising out of the sale of property belonging to said State Dispensary of South Carolina, or from the collection of debts due it.

(2) That the defendants, their agents, servants, attorneys, employees and depositaries, be restrained and enjoined from disposing of or paying out, or in any manner interfering further
(167) with the said fund or any part thereof, except to transfer the same to the receiver appointed by the court.

(3) That it be referred to a Master to ascertain and determine the amount due to your orators and other creditors upon their claims against the said State Dispensary and against said fund in the hands of said defendants, and that a decree be entered ordering and directing that the amounts so found to be due be immediately paid to your orators respectively. That the defendants be required to set forth an account of all and every sum or sums of money received by them, or either of them, or which ought to have been received by them, or which has been received by any person or persons by their or either of their orders, or for their or either of their use, from the sale of any property of said State Dispensary or the collection of any debt or debts due to it, and when and from whom, and from what in particular, all and every such sums were respectively received, and where deposited and held, and how the same, respectively, have been applied or disposed of.

And that your orators have such other and further relief in the premises as the nature of the circumstances of the case may require, and as to the court may seem meet and proper.

And may it please your honors to grant unto your orators a writ of injunction conformable to the prayer of this bill, and also a writ of subpœna directed to all the defendants not heretofore served with subpœna commanding them, and each of them, to appear and answer this bill of complaint, but not under oath, discovery and answer under oath being hereby expressly waived as to all and every of the defendants herein, and to stand to, perform and abide such orders, directions and decrees in the premises as to the court shall seem meet or be required by the principles of equity and good conscience.

(Signed) T. MOULTRIE MORDECAI,
" FRANK CARTER and
H. C. CHEDESTER,
Solicitors for Complainants.

Verification of Bill of Complaint.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

(168)

Wilson Distilling Company et al., Complainants,
vs.
W. J. Murray et al., Defendants.

Frank Carter, being sworn, says that he is one of the solicitors for the complainants in the above entitled suit, and that he

verifies this amended and supplemental bill of complaint herein on behalf of said complainants; that said verification is made by this affiant for the reason that said Wilson Distilling Company and said Anheuser-Busch Brewing Association are foreign corporations, and that no officer or agent of said corporations, or either of them, capable of making said verification is present within the district of South Carolina, or at the place where said bill of complaint was prepared, to the knowledge or belief of this affiant, and that said Charles J. Gallagher, Jr., and Edward Burton, partners as Gallagher & Burton, and John M. Cranston, trading as Jack Cranston Company, are non-residents of the State and District of South Carolina, and neither of said parties is present within said District of South Carolina, or at the place where said bill of complaint was prepared, to the knowledge or belief of this affiant; that the foregoing bill of complaint is true of his own knowledge, except as to those matters therein (169) stated upon information and belief, and as to those matters he believes it to be true.

(Signed) FRANK CARTER.

Sworn to and subscribed before me this the 19th day of February, 1908.

(Signed) JOSEPH P. BRADY,
Clerk U. S. Circuit Court for the Eastern District of Virginia.

Upon the back of said Amended and Supplemental Bill of Complaint appears the following endorsement:

"Filed by leave of court this February 19th, 1908.

"(Signed) J. C. PRITCHARD,
"U. S. Circuit Judge."

Sub. ad Re.

(170) Filed Feb. 24, 1908.

UNITED STATES OF AMERICA, DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT.

The President of the United States of America to The National Loan and Exchange Bank, of Columbia, South Carolina; The Palmetto National Bank, of Columbia, South Carolina; The Columbia Savings and Trust Company, of Columbia, South Carolina; The Bank of Timmonsville, of Timmonsville, South Carolina; The People's Bank of Union, of Union, South Carolina; The Bank of Aiken, of Aiken, South Carolina; The Piedmont Savings and Investment Company, of Greenville, South Carolina; The Merchants' and Farmers' Bank, of Cheraw, South Carolina; and the Bank of Camden, Camden, South Carolina, Defendants:

You are hereby strictly commanded and firmly enjoined that all manner of excuses being laid aside, you be and appear before the Judges of the Circuit Court of the United States for the District of South Carolina, at Charleston, on Monday, the sixth day of April, 1908, twenty days after the service thereof; then and there true and perfect answer to make upon your corporal oath on the Holy Evangelists, to all such matters as shall be objected against you in the Amended and Supplemental Bill of Complaint of Wilson Distilling Company, a body corporate under the laws of the State of New Jersey and a citizen and resident of said State; Anheuser-Busch Brewing Association, a body corporate under the laws of the State of Missouri and a citizen and resident of said State; Charles J. Gallagher, Jr., and Edward Burton, partners as Gallagher & Burton, citizens and residents of the State of Pennsylvania; and John M. Cranston, trading as Jack Cranston Company, a citizen and resident of the State of Georgia.

And, also, That you do, on the rules day next immediately after the day appointed and expressed, file, or cause to be filed, in the Registry of said Court, your plea, answer or demurrer,
(171) to the said bill of complaint.

Herein fail not, under the pain of one hundred pounds.

Given under the seal of the said court.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States of America, at Charleston, in the District aforesaid, the 24th day of February, in the year of our Lord

one thousand nine hundred and eight, and in the one hundred and thirty-second year of the Sovereignty and Independence of the United States of America.

T. MOULTRIE MORDECAI,
FRANK CARTER and
H. C. CHEDESTER,
[Seal of Court] Complainant's Solicitors.

C. J. MURPHY,
C. C. C. U. S., Dist. S. C.

Memorandum.

The defendants will take notice that they are required to enter their appearance in this suit, in the Clerk's Office of the Circuit Court of the United States for the District of South Carolina, on or before the first Monday of April, 1908, otherwise the bill will be taken *pro confesso* against you.

C. J. MURPHY,
[Seal] C. C. C., U. S. Dist. of S. C.

Order to Show Cause.

(172) Filed Feb. 24, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT, AT CHARLESTON. IN EQUITY.

Wilson Distilling Co. et al., Complainants,
vs.
W. J. Murray et al., Defendants.

Upon considering the amended and supplemental bill of complaint this day filed in the above entitled cause, it is now, on motion of the solicitors for the complainants, ordered and adjudged that the defendants be and appear before the undersigned Judge, at his chambers, in Asheville, North Carolina, at 10 o'clock A. M., on the 29th day of February, 1908, and show cause, if any they have, why the relief prayed for in said bill shall not be granted, and why a Receiver shall not be appointed and injunction issued as therein prayed.

Let a copy of this order, together with a copy of said amended and supplemental bill of complaint, be forthwith served upon each of the defendants.

This the 19th day of February, 1908.

(Signed) J. C. PRITCHARD,
U. S. Circuit Judge.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(173) I hereby certify and return that I served the annexed amended bill of complaint, order to make new defendants, order to show cause and sub. ad re. on the therein-named W. J. Murray by handing to and leaving a true and correct copy thereof with him personally at Columbia, S. C., in said district, on the 24 day of Feby., A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By CHARLES T. SENN, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(174) I hereby certify and return that I served the annexed amended bill of complaint, order to make new defendants, order to show cause & sub. ad re. on the therein-named John McSween by handing to and leaving a true and correct copy thereof with him personally at Columbia, S. C., in said district, on the 25 day of Feby., A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By CHARLES T. SENN, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(175) I hereby certify and return that I served the annexed amended bill of complaint, order to make new defendants, or-

der to show cause & sub. ad re. on the therein-named B. F. Arthur, personally & upon The Peoples Bank of Union, S. C., by handing to and leaving a true and correct copy thereof with B. F. Arthur, president, personally, at Union, S. C., in said district, on the 26 day of Feby., A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By J. H. McLANE, Deputy.

Sworn to before me this 28th Feby., 1908.

J. B. ATKINS,
[Seal] U. S. Comm'r.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(176) I hereby certify and return that I served the annexed amended bill of complaint, order to make new defendants, order to show cause & sub. ad re. on the therein-named C. K. Henderson by handing to and leaving a true and correct copy thereof with him personally at Aiken, S. C., in said district, on the 25 day of Feby., A. D., 1908, 9:30 a. m.

J. DUNCAN ADAMS,
U. S. Marshal.
By M. W. HUDGENS, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(177)

I hereby certify and return that I served the annexed amended bill of complaint, order to make new defendants, order to show cause & sub. ad re. on the therein-named Avery Patton by handing to and leaving a true and correct copy thereof with him personally at Greenville, S. C., in said district, on the 24 day of Feby., A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By REUBEN GOSNELL, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of So. Ca. } *ss:*

(178)

I hereby certify and return that I served the annexed amended bill of complaint, order to make new defendants, order to show cause & sub. ad re. on the therein-named National Loan & Exchange Bk. by handing to and leaving a true and correct copy thereof with G. M. Berry, cashier, personally at Columbia, S. C., in said district, on the 24 day of Feby., A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By CHARLES T. SENN, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(179)

I hereby certify and return that I served the annexed amended bill of complaint, order to make new defendants, order to show cause & sub. ad re. on the therein-named Palmetto National Bank by handing to and leaving a true and correct copy thereof with W. M. Gibbes, Jr., Assistant Cashier, personally at Columbia, S. C., in said district, on the 24 day of Feby., A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By CHARLES T. SENN, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(180)

I hereby certify and return that I served the annexed amended bill of complaint, order to make new defendants, order to show cause & sub. ad re. on the therein-named Columbia Savings Bank & Trust Company by handing to and leaving a true and correct copy thereof with A. R. Heyward, president, personally at Columbia, S. C., in said district, on the 24 day of Feby., A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By CHARLES T. SENN, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(181)

I hereby certify and return that I served the annexed amended bill of complaint, order to make new defendants, order to show cause & sub. ad re. on the therein-named Bank of Timmonsville, S. C., by handing to and leaving a true and correct copy thereof with John McSween, president, personally at Columbia, S. C., in said district, on the 25 day of Feby., A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By CHARLES T. SENN, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(182)

I hereby certify and return that I served the annexed amended bill of complaint, order to make new defendants, order to show cause & sub. ad re. on the therein-named Piedmont Savings & Investment Co., by handing to and leaving a true and correct copy thereof with Frank Capers, president of said company, personally at Greenville, S. C., in said district, on the 24 day of Feby., A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By REUBEN GOSNELL, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(183)

I hereby certify and return that I served the annexed amended bill of complaint, order to make new defendants, order to show cause & sub. ad re. on the therein-named Merchants & Farmers Bank, Cheraw, S. C., by handing to and leaving a true and correct copy thereof with W. F. Stevenson, president, personally at Columbia, S. C., in said district, on the 25 day of Feby., A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By CHARLES T. SENN, Deputy.

Order Allowing Jack Cranston Co. to Intervene as a Party Complainant.

(184) Filed February 24th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

Wilson Distilling Company et al., Complainants,
vs.
W. J. Murray et al., Defendants. } In Equity.

ORDER.

John M. Cranston, trading as Jack Cranston Company, having appeared by his solicitors, T. Moultrie Mordecai and Frank Carter & H. C. Chedester, and moved for leave to intervene as a party complainant in this cause;

It is ordered that said John M. Cranston, trading as Jack Cranston Company, have leave to intervene as a party complainant herein and that he be, and he hereby is made such party complainant.

This the 19th day of February, 1908.

J. C. PRITCHARD,
U. S. Circuit Judge.

Petition of Big Springs Distilling Co. to Intervene and Order Allowing Same.

(185) Filed Feb. 26, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

Wilson Distilling Company et al., Complainants,
vs.
W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, constituting the State Dispensary Commission of South Carolina and W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, individually, Defendants.
} In Equity.

PETITION.

To the Honorable the Judges of the Circuit Court of the United States for the District of South Carolina.

The petition of Big Spring Distilling Company, respectfully shows:

1. That it is a corporation duly incorporated under the laws of the State of Georgia, having its principal office at Savannah, Georgia.

2. That heretofore during the year 1907 and up to October, 1907, your orator sold to the State Dispensary of South Carolina, through its directors who were the proper officers authorized by law to purchase wines and liquors for said Dispensary to the amount and value of $25,006.78 and your orator shipped said goods to the State Dispensary and the same were accepted by it through its duly authorized officer and as your orator is informed and believes the same were sold by said Dispensary at a large profit. That an invoice and account of the goods so sold and delivered were duly rendered by your orator to said State Dispensary through its proper officers and agents and that the same was duly accepted and approved, and the amount thereof became due to your orator as upon an account stated. That no part of the price of said whiskies and liquors has ever been paid and the whole thereof is justly due to the

complainant by said State Dispensary at the time of the appointment of said Commission, and still is justly due it. That the whiskey and liquors so sold to the said Dispensary were reasonably worth the sum of $25,006.78.

3. That your orator is entitled to be paid said sum out of the funds described in the petition filed in the above named (186) cause. That it has an interest in the subject of said cause and it is necessary for it to intervene in said cause to protect its right and interest in the said subject matter. That said dispensary commissioners have refused to pay said sums.

4. That your orator is desirous of intervening in the above stated cause in order to protect its respective interests and to be made parties complainant therein. It adopts the several allegations and prayers of the petition filed therein and desires leave to file such further pleadings as may be meet and proper in the premises.

Whereupon, it prays that this intervention be allowed that it be made a party plaintiff in said cause and that this intervention be filed as a part of the record in said cause, and that it be granted all the relief prayed for by the complainant in the original bill.

(Signed) OSBORNE and LAWRENCE,
Solicitors for Pet'r.

STATE OF GEORGIA,
Chatham County.

(187) On this the 19th day of February, 1908, before me, personally appeared E. F. O'Connor, who being first duly sworn, says that he is an officer of the intervening corporation, the Big Spring Distilling Company, to-wit: Its Secretary and Treasurer, and makes this affidavit in its behalf that he has read the foregoing petition or bill for intervention and knows the contents thereof, that the same is true, according to his own knowledge, except as to those matters therein stated upon information and belief and as to those matters he believes it to be true.

(Signed) E. F. O'CONNOR,

Sworn to and subscribed before me this 19th, 1908.

(Signed) SIMON N. GAGAN,
N. P. C. C. Ga.

(188) Upon reading the petition of Big Spring Distilling Company, a corporation of Savannah, Georgia, who appears through its counsel and asks and seeks to be made parties complainant herein intervening for that purpose, it is ordered that it be, and it is hereby permitted to intervene and it is hereby made a party complainant herein and granted leave to file the foregoing petition as a part of the record in the above named cause with leave to file such other and further pleadings as may be necessary and proper in the premises.

This 21st day of February, 1908.

(Signed) J. C. PRITCHARD,
U. S. Circuit Judge.

Petition of Ullman & Co. to Intervene and Order Allowing Same

(189) Filed Feb. 26, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

Wilson Distilling Company et al., Complainants, *vs.* W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, constituting the State Dispensary Commission of South Carolina and W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, individually, Defendants.	In Equity.

PETITION.

To the Honorable the Judges of the Circuit Court of the United States for the District of South Carolina.

The petition of Ullman and Company respectfully shows:

1. That it is a partnership composed of Adolph Ullman and L. C. Strauss of Cincinnati, Ohio, doing business in Cincinnati, Ohio.

2. That heretofore during the year 1907 and prior thereto your petitioner sold to the State Dispensary of South Carolina, through its directors who were the proper officers author-

ized by law to purchase wines and liquors for said Dispensary, wines and liquors to the amount and value of $35,339.67 and your petitioner shipped said goods to the State Dispensary, and the same were accepted by it through its duly authorized officers, and as your petitioner is informed and believes, the same were sold by the said Dispensary at a large profit. That an invoice and account of the goods so sold and delivered were duly rendered by your petitioner to said State Dispensary through its proper officers and agents. That the price of said goods was agreed upon between the officers of said Dispensary and your petitioner. That no part of the price of said whiskies and liquors has ever been paid, and the whole thereof is justly due to petitioner by said State Dispensary at the time of the appointment of the Commission described in the original bill filed in said case and still is justly due. That they whiskey and liquors so sold to the said Dispensary were reasonably worth the said sum of $35,339.67.

(190) 3. That your petitioner is entitled to be paid said sum of the fund described in the original petition filed in the above named cause. That it has an interest in the subject matter of said cause, and it is necessary for it to intervene in said cause to protect its right and interest in the said subject matter. That payment has been refused.

4. That your petitioner is desirous of intervening in the above stated cause in order to protect its respective interests and to be made a party complainant therein. It adopts the several allegations and prayers of the petition filed therein and desires leave to file such further pleadings as may be meet and proper in the premises.

Whereupon, petitioner prays that this intervention be allowed, that it be made a party plaintiff in said cause and that this intervention be filed as a part of the record in said cause and that it be granted all the relief prayed for by the complainant in the original bill.

(Signed) NELSON & NELSON,
(Signed) OSBORNE & LAWRENCE,
Solicitors for Petitioner.

STATE OF VIRGINIA,
Henrico County.

On this, the 20th day of February, 1908, before me personally appeared M. A. Goodman, who being first duly sworn,

says that he is an agent of the intervening partnership Ullman & Company, and makes this affidavit in its behalf; that he has read the foregoing petition or bill for intervention and knows the contents thereof, that the same is true according to his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters he believes it to be true.

(Signed) M. A. GOODMAN.

Sworn to and subscribed before me this February 20th, 1908.

(Signed) E. LESLIE SPENCER, JR.,
Notary Public.

(191) Upon reading and considering the petition of Ullman & Company of Cincinnati, Ohio, who appear through counsel and ask and seek to be made party complainant herein, intervening for that purpose, it is ordered that it be and it is hereby permitted to intervene and it is hereby made a party complainant herein and granted leave to file the foregoing petition as a part of the record in the above named cause with leave to file such other and further pleadings as may be necessary and proper in the premises.

This 21st day of February, 1908.

(Signed) J. C. PRITCHARD,
U. S. Circuit Judge.

Petition of Anchor Distilling Co. to Intervene and Order Allowing Same.

(192) Filed Feb. 26, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

Wilson Distilling Company et al., Complainants,
vs.
W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, constituting the State Dispensary Commission of South Carolina and W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, individually, Defendants.
} In Equity.

PETITION.

To the Honorable the Judges of the Circuit Court of the United States for the District of South Carolina.

The petition of Anchor Distilling Company respectfully shows:

1. That it is doing business in Cincinnati, Ohio.

2. That heretofore during the year 1907 and prior thereto your petitioner sold to the State Dispensary of South Carolina, through its directors who were the proper officers authorized by law to purchase wines and liquors for said Dispensary, wines and liquors to the amount and value of $1,914.31, and your petitioner shipped said goods to the State Dispensary and the same was accepted by it through its duly authorized officers and as your petitioner is informed and believes, the same were sold by said Dispensary at a large profit. That an invoice and account of the goods so sold and delivered were duly rendered by your petitioner to said State Dispensary through its proper officers and agents. That the price of said goods was agreed upon between the officers of said Dispensary and your petitioner. That no part of the price of said whiskies and liquors has ever been paid, and the whole thereof is justly due to petitioner by said State Dispensary at the time of the appointment of the Commission described in the original bill filed in said

case, and still is justly due. That the whiskey and liquors so sold to the said Dispensary were reasonably worth the said sum of $1,914.31.

(193) 3. That your petitioner is entitled to be paid said sum out of the fund described in the original petition filed in the above named cause. That is has an interest in the subject matter of said cause and it is necessary for it to intervene in said cause to protect its right and interest in the said subject matter. That payment has been refused.

4. That your petitioner is desirous of intervening in the above stated cause in order to protect its respective interests and to be made a party complainant therein. It adopts the several allegations and prayers of the petition filed therein and desires leave to file such further pleadings as may be meet and proper in the premises.

Whereupon, petitioner prays that this intervention be allowed, that it be made a party plaintiff in said cause, and that this intervention be filed as a part of the record in said cause and that it be granted all the relief prayed for by the complainant in the original bill.

(Signed) NELSON & NELSON,
(Signed) OSBORNE & LAWRENCE,
Solicitors for Petitioner.

STATE OF VIRGINIA,
Henrico County.

On this, the 20th day of February, 1908, before me personally appeared M. A. Goodman, who being first duly sworn, says that he has read the foregoing petition or bill for intervention and knows the contents thereof, that the same is true according to his own knowledge, except as to those matters therein stated upon information and belief and as to those matters he believes it to be true.

(Signed) M. A. GOODMAN.

Sworn to and subscribed before me this February 20th, 1908.

(Signed) E. LESLIE SPENCER, JR.,
Notary Public.

(194) Upon reading and considering the petition of Anchor Distilling Company of Cincinnati, Ohio, who appear through

counsel and ask and seek to be made party complainant herein, intervening for that purpose, it is ordered that it be and is hereby permitted to intervene and it is hereby made a party complainant herein and granted leave to file the foregoing petition as a part of the record in the above named cause with leave to file such other and further pleadings as may be necessary and proper in the premises.

This 21st day of February, 1908.

(Signed) J. C. PRITCHARD,
U. S. Circuit Judge.

Petition of Belair Distilling Company to Intervene and Order Allowing Same.

(195) Filed Feb. 26, 1908. ,

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

Wilson Distilling Company et al., Complainants, *vs.* W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, constituting the State Dispensary Commission of South Carolina and W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, individually, Defendants.	In Equity.

PETITION.

To the Honorable the Judges of the Circuit Court of the United States for the District of South Carolina.

The petition of Belair Distilling Company respectfully shows:

1. That it is a corporation incorporated under the laws of Virginia, doing business in Baltimore, Maryland.

2. That heretofore during the year 1907 and prior thereto your petitioner sold to the State Dispensary of South Carolina, through its directors who were the proper officers authorized by law to purchase wines and liquors for said Dispensary, wines

and liquors to the amount and value of $6,386.41 and your petitioner shipped said goods to the State Dispensary and the same were accepted by it through its duly authorized officers and as your petitioner is informed and believes, the same were sold by said Dispensary at a large profit. That an invoice and account of the goods so sold and delivered were, duly rendered by your petitioner to said State Dispensary through its proper officers and agents. That the price of said goods was agreed upon between the officers of said Dispensary and your petitioner. That no part of the price of said whiskies and liquors has ever been paid, and the whole thereof is justly due to petitioner by said State Dispensary at the time of the appointment of the Commission described in the original bill filed in said case and still is justly due. That they whiskey and liquors so sold to the said Dispensary were reasonably worth the said sum of $6,386.41.

(196)

3. That your petitioner is entitled to be paid said sum out of the fund described in the original petition filed in the above named cause. That it has an interest in the subject matter of said cause, and it is necessary for it to intervene in said cause to protect its right and interest in the said subject matter. That payment has been refused.

4. That your petitioner is desirous of intervening in the above stated cause in order to protect its respective interests and to be made a party complainant therein. It adopts the several allegations and prayers of the petition filed therein and desires leave to file such further pleadings as may be meet and proper in the premises.

Whereupon, petitioner prays that this intervention be allowed, that it be made a party plaintiff in said cause and that this intervention be filed as a part of the record in said cause and that it be granted all the relief prayed for by the complainant in the original bill.

(Signed) OSBORNE & LAWRENCE,
Solicitors for Petitioner.

STATE OF VIRGINIA,
Henrico County.

(197) On this, the 20th day of February, 1908, before me personally appeared S. A. Nathans, who being first duly sworn, says that he is vice-president and treasurer of Belair Distilling Company, that he is authorized to make this affidavit and that he has read the foregoing petition or bill for intervention and

knows the contents thereof, that the same is true according to his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters he believes it to be true.

(Signed) S. A. NATHANS.

Sworn to and subscribed before me this February 20th, 1908.

(Signed) E. LESLIE SPENCER, JR.,
Notary Public.

Upon reading and considering the petition of Belair Distilling Company, who appear through counsel and ask and seek to be made party complainant herein, intervening for that purpose it is ordered that it be and it is hereby permitted to intervene and it is hereby made a party complainant herein and granted leave to file the foregoing petition as a part of the record in the above named cause with leave to file such other and further pleadings as may be necessary and proper in the premises.

This 21st day of February, 1908.

(Signed) J. C. PRITCHARD,
U. S. Circuit Judge.

Petition of Richard & Co. to Intervene and Order Allowing Same

(198) Filed Feb. 26, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

Wilson Distilling Company et al., Com-
vs.
W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, constituting the State Dispensary Commission of South Carolina and W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, individually, Defendants.
} In Equity.

PETITION.

To the Honorable the Judges of the Circuit Court of the United States for the District of South Carolina.

The petition of Richard & Company respectfully shows:

1. That it is a partnership composed of Edward Richard, Joseph Schiffman and Salvador S. Richard, doing business in

Washington, D. C., as co-partners under the name and style of Richard & Company.

2. That heretofore during the year 1907 and prior thereto your petitioner sold to the State Dispensary of South Carolina, through its directors who were the proper officers authorized by law to purchase wines and liquors for said Dispensary, wines and liquors to the amount and value of $1,775.50 and your petitioner shipped said goods to the State Dispensary and the same were accepted by it through its duly authorized officers and as your petitioner is informed and believes, the same were sold by said Dispensary at a large profit. That an invoice and account of the goods so sold and delivered were, duly rendered by your petitioner to said State Dispensary through its proper officers and agents. That the price of said goods was agreed upon between the officers of said Dispensary and your petitioner. That no part of the price of said whiskies and liquors has ever been paid, and the whole thereof is justly due to petitioner by said State Dispensary at the time of the appointment of the Commission described in the original bill filed in said case and still is justly due. That they whiskey and liquors so sold to the said Dispensary were reasonably worth the said sum of $1,-775.50.

(199)

3. That your petitioner is entitled to be paid said sum out of the fund described in the original petition filed in the above named cause. That it has an interest in the subject matter of said cause, and it is necessary for it to intervene in said cause to protect its right and interest in the said subject matter. That

4. That your petitioner is desirous of intervening in the above stated cause in order to protect its respective interests and to be made a party complainant therein. It adopts the several allegations and prayers of the petition filed therein and desires leave to file such further pleadings as may be meet and proper in the premises.

Whereupon, petitioner prays that this intervention be allowed, that it be made a party plaintiff in said cause and that this intervention be filed as a part of the record in said cause and that it be granted all the relief prayed for by the complainant in the original bill.

(Signed) OSBORNE & LAWRENCE,
Solicitors for Petitioner.

STATE OF VIRGINIA,
Henrico County.

(200) On this, the 20th day of February, 1908, before me personally appeared Salvador S. Richard, who being first duly sworn, says that he is a partner in the firm of Richard & Company and is authorized to make this affidavit and that he has read the foregoing petition or bill for intervention and knows the contents thereof that the same is true according to his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters he believes it to be true.

(Signed) SALVADOR S. RICHARD.

Sworn to and subscribed before me this February 20th, 1908.

(Signed) E. LESLIE SPENCER, JR.,

Upon reading and considering the petition of Richard & Company who appear through counsel and ask and seek to be made party complainant herein, intervening for that purpose, it is ordered that it be and it is hereby permitted to intervene and it is hereby made a party complainant herein and granted leave to file the foregoing petition as a part of the record in the above named cause with leave to file such other and further pleadings as may be necessary and proper in the premises.

This 21st day of February, 1908.

(Signed) J. C. PRITCHARD,
U. S. Circuit Judge.

Petition of D. Sachs & Sons to Intervene and Order Allowing Same.

(201) Filed March 2nd, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

Wilson Distilling Company et al., Complainants,
vs.
W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, constituting the State Dispensary Commission of South Carolina and W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, individually, Defendants.
} In Equity.

To the Honorable the Judges of the Circuit Court of the United States for the District of South Carolina.

The petition of D. Sachs & Sons, respectfully shows:

1. That it is a partnership composed of M. D. Sachs, E. Sachs and S. Haas, doing business under the firm name of D. Sachs & Sons, in the City of Louisville, in the State of Kentucky.

2. That heretofore during the year 1906, your petitioner sold to the State Dispensary of South Carolina, through its directors who were the proper officers authorized by law to purchase wines, liquors for said Dispensary, wines and liquors to the amount and value of $9,198.33, and your petitioner shipped said goods to the State Dispensary, and the same were accepted by it through its duly authorized officers, and as your petitioner is informed and believes, the same were sold by said Dispensary at a large profit. That an invoice and account of the goods so sold and delivered were duly rendered by your petitioner to said State Dispensary through its proper officers and agents. That the price of said goods was agreed upon between the officers of said Dispensary and your petitioner. That no part of the price of said whiskies and liquors has ever been (202) paid, and the whole amount thereof is justly due to petitioner by said State Dispensary at the time of the appointment of the Commission described in the original bill filed in

said case and still is justly due. That the whiskey and liquors so sold to the said Dispensary were reasonably worth the said sum of $9,198.33.

3. That your petitioner is entitled to be paid said sum out of the fund described in the original petition filed in the above named cause, and it is neccessary for it to intervene in said cause to protect its right and interest in the said subject matter. That payment has been refused.

4. That your petitioner is desirous of intervening in the above stated cause in order to protect its respective interests and to be made a party complainant therein. It adopts the several allegations and prayers of the petition filed therein and desires leave to file such further pleadings as may be mete and proper in the premises.

Whereupon, petitioner prays that this intervention be allowed, that it be made a party plaintiff in said cause, and that this intervention be filed as a part of the record in said cause, and that it be granted all the relief prayed for by the complainant in the original bill.

NELSON & NELSON,
Attys. for Petitioner D. Sachs & Sons.

STATE OF SOUTH CAROLINA,
County of Richland.

Before me personally appeared P. H. Nelson, who, being duly sworn, says: That he is the senior member of the law firm of Nelson & Nelson, who are the attorneys of the intervening partnership of D. Sachs & Sons, and that he verifies the foregoing petition or bill for intervention on behalf of deponent for the reason that no member of said firm or agent is present within the District of South Carolina to the knowledge of this deponent at the time the foregoing petition or bill for intervention was prepared: That the foregoing petition or bill for intervention is made upon knowledge and information conveyed to him by the said D. Sachs & Sons, and upon such information as to these matters he believes it to be true.

P. H. NELSON.

Sworn to and subscribed before me this 28th day of February, 1908.

[Seal]

J. TEAM GETTYS,
Notary Public for South Carolina.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

Wilson Distilling Company et al., Complainants,
vs.
W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, constituting the State Dispensary Commission of South Carolina and W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, individually, Defendants.
(203)

In Equity.

ORDER.

Upon reading and considering the petition of D. Sachs & Sons of Louisville, Kentucky, who appear through counsel and ask and seek to be made party complainant herein, intervening for that purpose.

It is ordered

That it be and it is hereby permitted to intervene and it is hereby made a party complainant and granted leave to file the foregoing petition as a part of the record in the above named cause with leave to file such other and further pleadings as may be necessary and proper in the premises.

This 29th day of February, 1908.

(Signed) J. C. PRITCHARD,
U. S. Circuit Judge.

Order Continuing Injunction.

(204) Filed March 2nd, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT,

The Wilson Distilling Company et al., Complainants,

vs.

W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson, and Avery Patton, constituting the State Dispensary Commission of South Carolina, and W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, individually, The National Loan and Exchange Bank, The Palmetto National Bank, The Columbia Savings and Trust Company, The Bank of Timmonsville, The Peoples Bank of Union, The Bank of Aiken, The Piedmont Savings & Investment Company, The Merchants and Farmers Bank and the Bank of Camden, Defendants.

Pursuant to the order of the court heretofore issued, this cause came on to be heard, counsel for the respondents asking for further time to make their return to the rule to show cause, it is

Ordered, that Saturday, the 7th day of March, 1908, at 10 o'clock in the forenoon at Asheville, North Carolina, is hereby set for the filing and service of such return and the hearing of the rule thereupon why a receiver should not be appointed and for the other relief prayed in the bill.

Upon application of the counsel for the defendants, said defendants are allowed until rules day in April, 1908, at 10 (205) o'clock in the forenoon to plead, answer, or demur to amended or supplemental bill of complaint herein, on which date the cause it set for hearing.

It is now, upon motion of T. Moultrie Mordecai, Frank Carter and H. C. Chedester, attorneys for the complainants,

Ordered, adjudged and decreed by the court that the order heretofore issued in this cause restraining and enjoining the above named defendants from intervening with, paying out or transferring to any person or persons whomsoever or in any

way disturbing or changing the present status of the funds in the control and possession of the South Carolina State Dispensary Commission and in part deposited with the other defendants herein, and from taking any steps with reference to said fund tending to or which may put said funds beyond the jurisdiction of this court, be and the same is hereby continued of force until the further order of this court, and the motion of the complainants for the appointment of a receiver of said fund is hereby continued until Saturday, the 7th day of March, 1908, at 10 o'clock in the forenoon at Asheville.

Dated the 29th day of February, 1908.

J. C. PRITCHARD,
U. S. Circuit Judge.

Order Making Certain Banks Parties Defendant and Restraining Order.

(206) Filed March 5th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT, AT CHARLESTON.

Wilson Distilling Company et al., Complainants,
vs.
W. J. Murray et al., Defendants. } Order.

It having been suggested to the court that the fund in controversy in this action is held by the defendants composing the State Dispensary Commission, in part, on deposit in the hereinafter named Banks,

It is now, upon motion of T. Moultrie Mordecai and Frank Carter and H. C. Chedester, solicitors for the complainants, considered, ordered and adjudged that "The State Bank, of Columbia, S. C., The Bank of Charleston, of Charleston, S. C., The Peoples Loan and Exchange Bank, of Laurens, S. C., The Bank of Orangeburg, of Orangeburg, S. C., The National Exchange Bank, of Chester, S. C., The Commercial Bank of Camden, S. C., The Peoples Savings Bank of Abbeville, S. C., The City National Bank, of Greenville, S. C., The Greenville Savings and Trust Co., of Greenville, S. C., The Lexington Savings Bank, of Lexington, S. C., The Peoples National Bank, of Charleston, S. C., The Peoples Bank, of Greenville, S. C., The Norwood National Bank of Greenville, S. C., The

Merchants and Farmers Bank, of Spartanburg, S. C., The First National Bank, of Spartanburg, S. C., The Central National Bank of Spartanburg, S. C., The Bank of Dillon, Dillon, S. C., The Enterprise Bank of Charleston, S. C., The Merchants & Planters Bank of Gaffney, S. C., The Farmers & Merchants Bank of Anderson, S. C., The Farmers and Merchants Bank of Walterboro, S. C., The Commercial & Savings Bank, of Florence, S. C., The Bank of Hartsville, of Hartsville, S. C., all bodies corporate, residents and citizens of the State of South (207) Carolina, be, and they and each of them hereby are made parties defendant in this cause, and it is hereby ordered that subpœnas issue for said parties according to the course and practice of this court.

And it is further ordered, adjudged and decreed that all and every of the defendants be, and they and each of them hereby are restrained and enjoined from interfering with, paying out or transferring to any person or persons whomsoever, or in any way disturbing or changing the present status of the funds in the possession or control of the said South Carolina State Dispensary Commission, and deposited, in whole or in part, with the other defendants, and from taking any steps with reference to said fund, tending to, or which may put said funds or any part thereof, beyond the jurisdiction of this court, until the further order of this court.

Let a copy of this order, together with a copy of the amended and supplemental bill of complaint herein be forthwith served upon each of the defendants not heretofore served, and above named.

This the 3rd day of March, 1908.

J. C. PRITCHARD,
U. S. Circuit Judge.

Sub. ad Re.

(208) Filed March 6th, 1908.

UNITED STATES OF AMERICA,
Fourth Circuit.
District of South Carolina.

The President of the United States of America to The National Loan and Exchange Bank, of Columbia, South Carolina; The Palmetto National Bank, of Columbia, South Carolina; The Columbia Savings and Trust Company, of Columbia, South Carolina; The Bank of Timmonsville, of Timmonsville, South Carolina; The People's Bank of Union, of Union, South Carolina; The Bank of Aiken, of Aiken, South Carolina; The Piedmont Savings and Investment Company, of Greenville, South Carolina; The Merchants and Farmers Bank, of Cheraw, South Carolina; and the Bank of Camden, Camden, South Carolina; The State Bank of Columbia, S. C., The Bank of Charleston, of Charleston, S. C.; The Peoples Loan and Exchange Bank, of Laurens, S. C.; The Bank of Orangeburg, of Orangeburg, S. C.; The National Exchange Bank, of Chester, S. C.; The Commercial Bank, of Camden, S. C.; The Peoples Savings Bank of Abbeville, S. C.; The City National Bank, of Greenville, S. C.; The Greenville Savings and Trust Co., of Greenville, S. C.; The Lexington Savings Bank, of Lexington, S. C.; The Peoples National Bank, of Charleston, S. C.; The Peoples Bank, of Greenville, S. C.; The Norwood National Bank, of Greenville, S. C.; The Merchants and Farmers Bank, of Spartanburg, S. C.; The First National Bank of Spartanburg, S. C.; The Central National Bank of Spartanburg, S. C.; The Bank of Dillon, of Dillon, S. C.; The Enterprise Bank, of Charleston, S. C.; The Merchants and Planters Bank of Gaffney, S. C.; The Farmers & Merchants Bank, of Anderson, S. C.; The Farmers and Merchants Bank, of Walterboro, S. C.; The Commercial and Savings Bank, of Florence, S. C.; The Bank of Hartsville, of Hartsville, S. C., Defendants:

You are hereby strictly commanded and firmly enjoined that all manner of excuses being laid aside, you be and appear before the Judges of the Circuit Court of the United States (209) for the District of South Carolina, at Charleston, on Monday, the sixth day of April, 1908, twenty days after the service thereof; then and there true and perfect answer to make

upon your corporal oath on the Holy Evangelists, to all such matters as shall be objected against you in the amended and supplemental bill of complaint of Wilson Distilling Company, a body corporate under the laws of the State of New Jersey and a citizen and resident of said State; Anheuser-Busch Brewing Association, a body corporate under the laws of the State of Missouri and a citizen and resident of said State; Charles J. Gallagher, Jr., and Edward Burton, partners, as Gallagher & Burton, citizens and residents of the State of Pennsylvania; and John M. Cranston, trading as Jack Cranston Company, a citizen and resident of the State of Georgia.

And, also, That you do, on the rules day next immediately after the day appointed and expressed, file, or cause to be filed, in the Registry of said Court, your plea, answer or demurrer, to the said bill of complaint.

Herein fail not, under the pain of one hundred pounds.

Given under the said of the said court.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States of America, at Charleston, in the District aforesaid, the 5th day of March, in the year of our Lord one thousand nine hundred and eight, and in the one hundred and thirty-second year of the Sovereignty and Independence of the United States of America.

T. MOULTRIE MORDECAI,
FRANK CARTER and
H. C. CHEDESTER,
Complainant's Solicitors.

[Seal of Court]

C. J. MURPHY,
C. C. C. U. S., Dist. S. C.

Memorandum.

The defendants will take notice that they are required to enter their appearance in this suit, in the Clerk's Office of the Circuit Court of the United States for the District of South Carolina, on or before the first Monday of April, 1908, otherwise the bill will be taken *pro confesso* against you.

C. J. MURPHY,
C. C. C. U. S. Dist. S. C.

[Seal]

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(210)

I hereby certify and return that I served the annexed amended bill sub. ad re. & 1 order on the therein-named The State Bank by handing to and leaving a true and correct copy thereof with J. T. Melton, cashier, personally at Columbia, S. C., in said district, on the 7 day of March, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By CHARLES T. SENN, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(211)

I hereby certify and return that I served the annexed amended bill sub. ad re. & 1 order on the therein-named Bank of Charleston, by handing to and leaving a true and correct copy thereof with E. H. Pringle, president, personally at Charleston, S. C., in said district, on the 7th day of March, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By J. L. ADAMS, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(212)

I hereby certify and return that I served the annexed amended bill sub. ad re. & 1 order on the therein-named The Peoples Loan & Exchange Bank by handing to and leaving a true and correct copy thereof with C. W. Tune, Asst. Cashier, personally at Laurens, S. C., in said district, on the 7 day of March, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By REUBEN GOSNELL, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(213)

I hereby certify and return that I served the annexed amended bill sub. ad re. & 1 order on the therein-named The Bank of Orangeburg, by handing to and leaving a true and correct copy thereof with R. F. Bryant, cashier of said bank, personally at Orangeburg, S. C., in said district, on the 7th day of March, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By A. FISCHER, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(214)

I hereby certify and return that I served the annexed amended bill sub. ad re. & 1 order on the therein-named National Exchange Bank by handing to and leaving a true and correct copy thereof with J. L. Glenn, president, personally at Chester, S. C., in said district, on the 9 day of March, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
R. H. DOBSON, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(215)

I hereby certify and return that I served the annexed amended bill sub. ad re. & 1 order on the therein-named The Commercial Bank by handing to and leaving a true and correct copy thereof with C. J. Shannon, president, personally at Camden, S. C., in said district, on the 7 day of March, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By CHARLES T. SENN, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(216)

I hereby certify and return that I served the annexed amended bill sub. ad re. & 1 order on the therein-named The Peoples Savings Bank by handing to and leaving a true and correct copy thereof with S. G. Thompson, president of said bank, personally at Abbeville, S. C., in said district, on the 9 day of March, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By J. B. McADAMS, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(217)

I hereby certify and return that I served the annexed amended bill sub. ad re. & 1 order on the therein-named City National Bank by handing to and leaving a true and correct copy thereof with J. Johnson, cashier, personally at Greenville, S. C., in said district, on the 7 day of March, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By REUBEN GOSNELL, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(218)

I hereby certify and return that I served the annexed amended bill sub. ad re. & 1 order on the therein-named Greenville Savings Bank by handing to and leaving a true and correct copy thereof with F. F. Capers, Treas., personally at Greenville, S. C., in said district, on the 7 day of March, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By REUBEN GOSNELL, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(219)

I hereby certify and return that I served the annexed amended bill sub. ad re. & 1 order on the therein-named The Savings Bank by handing to and leaving a true and correct copy thereof with W. P. Roof, president, personally at Lexington, S. C., in said district, on the 9 day of March, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By CHARLES T. SENN, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(220)

I hereby certify and return that I served the annexed amended bill sub. ad re. & 1 order on the therein-named Peoples National Bank of Charleston, S. C., by handing to and leaving a true and correct copy thereof with R. G. Rhett, president, personally at Charleston, S. C., in said district, on the 7th day of March, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By J. L. ADAMS, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(221)

I hereby certify and return that I served the annexed amended bill sub. ad re. & 1 order on the therein-named The Peoples Bank by handing to and leaving a true and correct copy thereof with W. C. Beacham, cashier, personally at Greenville, S. C., in said district, on the 7 day of March, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By REUBEN GOSNELL, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(222)

I hereby certify and return that I served the annexed amended bill sub. ad re. & 1 order on the therein-named The Norwood Bank by handing to and leaving a true and correct copy thereof with A. L. Mills, cashier, personally at Greenville, S. C., in said district, on the 7 day of March, A. D., 1908. Bank of Charleston, by handing to and leaving a true and correct copy thereof with E. H. Pringle, president, personally at Charleston, S. C., in said district, on the 7th day of March, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By REUBEN GOSNELL, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(223)

I hereby certify and return that I served the annexed amended bill sub. ad re. & 1 order on the therein-named The Merchants & Farmers Bank by handing to and leaving a true and correct copy thereof with A. L. White, president, personally at Spartanburg, S. C., in said district, on the 7 day of March, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By J. H. McLANE, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(224)

I hereby certify and return that I served the annexed amended bill sub. ad re. & 1 order on the therein-named The First National Bank by handing to and leaving a true and correct copy thereof with W. E. Burnett, president, personally at Spartanburg, S. C., in said district, on the 7 day of March, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By J. H. McLANE, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(225)

I hereby certify and return that I served the annexed amended bill sub. ad re. & 1 order on the therein-named Central National Bank by handing to and leaving a true and correct copy thereof with John A. Land, president, personally at Spartanburg, S. C., in said district, on the 7 day of March, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By J. H. McLANE, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(226)

I hereby certify and return that I served the annexed amended bill sub. ad re. & 1 order on the therein-named The Bank of Dillon by handing to and leaving a true and correct copy thereof with W. T. Bethea, cashier, & acting president, at 10:30 P. M., personally at Dillon, S. C., in said district, on the ninth day of March, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By P. P. MEEKINS, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(227)

I hereby certify and return that I served the annexed amended bill sub. ad re. & 1 order on the therein-named Enterprise Bank by handing to and leaving a true and correct copy thereof with Wilson G. Harvey, president, personally at Charleston, S. C., in said district, on the 7th day of March, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By J. L. ADAMS, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(228)

I hereby certify and return that I served the annexed amended bill sub. ad re. & 1 order on the therein-named Merchants & Planters Bank by handing to and leaving a true and correct copy thereof with C. M. Smith, president, personally at Gaffney, S. C., in said district, on the 7 day of March, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By J. H. McLANE, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(229)

I hereby certify and return that I served the annexed amended bill sub. ad re. & 1 order on the therein-named The Farmers & Merchants Bank by handing to and leaving a true and correct copy thereof with J. R. Vandiver, president of said bank, personally at Anderson, S. C., in said district, on the 9 day of March, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By J. B. McADAMS, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(230)

I hereby certify and return that I served the annexed amended bill sub. ad re. order on the therein-named The Farmers & Merchants Bank of Walterboro, S. C., by handing to and leaving a true and correct copy thereof with R. H. Wickman, president of said bank, personally at Walterboro, in said district, on the 9th day of March, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By V. P. CLAYTON, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(231)

I hereby certify and return that I served the annexed amended bill sub. ad re. & 1 order on the therein-named The Commercial & Savings Bank of Florence, S. C., by handing to and leaving a true and correct copy thereof with A. M. Kittrell, cashier, personally at Florence, S. C., in said district, on the 6th day of March, A. D., 1908.
Greenville Savings Bank by handing to and leaving a true and correct copy thereof with F. F. Capers, Treas., personally at Greenville, S. C., in said district, on the 7 day of March, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By J. L. ADAMS, Deputy.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of S. C. } *ss:*

(232)

I hereby certify and return that I served the annexed amended bill sub. ad re. & 1 order on the therein-named The Bank of Hartsville, by handing to and leaving a true and correct copy thereof with J. L. Coker, president, A. M. McNair, vice-president, & L. Vaughan, cashier, at 12:30 P. M., personally at Hartsville, S. C., in said district, on the ninth day of March, A. D., 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By P. P. MEEKINS, Deputy.

Petition of Intervention of Frank G. Tullidge Co. et al.

(233) Filed March 5, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

Wilson Distilling Company et al., Petitioners,
against
W. J. Murray et al., Respondents.

Petition of Intervention of the Frank G. Tullidge Company Et Al.

To the Judges of the Circuit Court of the United States for the District of South Carolina:

Your petitioners, The Frank G. Tullidge Company, The Live Oak Distilling Company, Joseph A. Magnus & Company, The Old 76 Distilling Company, J. F. Beckman & Company, Paul Jones & Company, The Anheuser-Busch Brewing Association, The Belroy Distilling Company, The Big Four Distilling Company, H. A. Thierman & Company, D. Sachs & Sons, The Maring-Hart Company, H. Rosenthal & Son, & Augusta Brewing Company, show to the court:

That there is justly due to them from the State Dispensary of South Carolina, the following sums for liquors sold and delivered to said Dispensary during the year 1906 and prior to February 16th, 1907, to-wit:

To the Frank G. Tullidge Company,	$ 1,049.69
To the Live Oak Distilling Company,	26,190.82
To Joseph A. Magnus & Company,	16,648.76
To The Old 76 Distilling Company,	3,208.33
To J. F. Beckman & Company,	2,561.22
To Paul Jones & Company,	14,927.88
To The Anheuser-Busch Brewing Asso'n,	9,504.09
To the Belroy Distilling Company,	38,004.17
To The Big Four Distilling Company,	4,238.94
To H. A. Thierman & Company,	8,674.60
To D. Sachs & Sons,	8,480.05
To The Maring-Hart Company,	15,506.34
To H. Rosenthal & Son,	3,619.29
To Augusta Brewing Company,	1,211.25

(234) That said indebtedness are just liabilities of said State Dispensary, payable out of the funds in the hands of the defendants, the State Dispensary Commission, under the provisions of the Act approved February 16th, 1907, entitled an Act to Provide for the Disposition of all property connected with the State Dispensary and to wind up its affairs, and that the said amounts have been settled and adjudicated by said State Dispensary Commission to be due to your petitioners, as appears by the decrees of said State Dispensary Commission, duplicate originals of which, duly certified, are hereto attached and made a part hereof, and the said Commission have decreed that warrants for said sums be issued to your petitioners for said several amounts.

That the funds in the hands of said State Dispensary Commission are more than sufficient to pay said sums found due to your petitioners and all of the other just liabilities of said State Dispensary.

Your petitioners therefore pray that this intervening petition may be received and filed and that an order may be entered authorizing the defendants, the State Dispensary Commission, to pay the said sums found to be due to your petitioners out of the funds in their hands, and that the order of injunction heretofore entered in this case and in the case of the Fleischman Company against W. J. Murray et al., be modified accordingly.

LAWRENCE MAXWELL, JR.,
Attorney for Petitioners.

Claim on Account of Sales to State Dispensary.

(235)

Duplicate Original.

Frank G. Tullidge Co.
vs.
The State of South Carolina.

The foregoing matter coming on for trial before the duly constituted commission created to investigate and make disposition of all matters and things concerning the South Carolina Dispensary, and counsel for the claimant in the above entitled cause having submitted an itemized statement of account of said claimant which shows overcharge against the State of South Carolina amounting to the sum of $86.25, and counsel representing said claimant consenting thereto;

Decree is hereby entered in favor of said Frank G. Tullidge Co. against the State of South Carolina for the sum of

$1,049.69. The balance of account, which from the books of the Dispensary appears to stand open in favor of Frank G. Tullidge & Co. is for the sum $1,135.94; the amount of $86.25 being the aggregate amount of said overcharges is hereby deducted therefrom, which leaves due the said claimant the sum of $1,049.69.

It is further decreed that warrant issue in behalf of said claimant for said sum hereby decreed to be due.

This 3rd day of March, 1908.

W. J. MURRAY, Comr.
JOHN McSWEEN, Com'r.
C. K. HENDERSON, Com'r.

STATE OF SOUTH CAROLINA,
County of Richland.

This is to certify that the above is a true and correct duplicate original of the decree of the Commission therein mentioned in the above stated case.

This 4th day of March, 1908.

JOHN McSWEEN, Secretary.

Claim on Account of Sales to State Dispensary.

(236)

Live Oak Distilling Co.
vs.
The State of South Carolina.

The foregoing matter coming on for trial before the duly constituted commission created to investigate and make disposition of all matters and things concerning the South Carolina Dispensary, and counsel for the claimant in the above entitled cause having submitted an itemized statement of account of said claimant which shows overcharge against the State of South Carolina amounting to the sum of $1,781.40, and counsel representing said claimant consenting thereto;

Decree is hereby entered in favor of the said Live Oak Distilling Company against The State of South Carolina for the sum of $26,190.82. The balance of account, which from the books of the Dispensary appears to stand open in favor of Live Oak Distilling Company is for the sum of $27,972.22; the amount of $1,781.40 being the aggregate amount of said overcharge is hereby deducted therefrom, which leave due the said claimant the said sum of $26,190.82.

It is further decreed that warrant issue in behalf of said claimant for said sum hereby decreed to be due.

This 3rd day of March, 1908.

W. J. MURRAY, Comr.
JOHN McSWEEN, Com'r.
C. K. HENDERSON, Com'r.

State Dispensary
Commission.

STATE OF SOUTH CAROLINA,
County of Richland.

This is to certify that the above is a true and correct duplicate original of the decree of the Commission therein mentioned in the above stated case.

This 4th day of March, 1908.

JOHN McSWEEN, Secretary.

Claim on Account of Sales to State Dispensary.

(237)

Duplicate Original.

Jos. A. Magnus & Co.
vs.
The State of South Carolina.

The foregoing matter coming on for trial before the duly constituted commission created to investigate and make disposition of all matters and things concerning the South Carolina Dispensary, and counsel for the claimant in the above entitled cause having submitted an itemized statement of account of said claimant which shows overcharge against the State of South Carolina amounting to the sum of $1,555.48, and counsel representing said claimant consenting thereto;

Decree is hereby entered in favor of said Jos. A. Magnus & Co. against the State of South Carolina for the sum of $16,648.76. The balance of account, which from the books of the Dispensary appears to stand open in favor of Jos. A. Magnus & Co. is for the sum of $18,204.24; the amount of $1,555.48 being the aggregate amount of said overcharges is hereby deducted therefrom, which leaves due the said sum of $16,648.76.

It is further decreed that warrant issue in behalf of said claimant for said sum hereby decreed to be due.

This 3rd day of March, 1908.

W. J. MURRAY, Comr.
JOHN McSWEEN, Com'r.
C. K. HENDERSON, Com'r.

State Dispensary
Commission.

STATE OF SOUTH CAROLINA,
County of Richland.

This is to certify that the above is a true and correct duplicate original of the decree of the Commission therein mentioned in the above stated case.

This 4th day of March, 1908.

JOHN McSWEEN, Secretary.

Claim on Account of Sales to State Dispensary.

(238)

Duplicate Original.

Old 76 Distilling Co.
vs.
The State of South Carolina.

The foregoing matter coming on for trial before the duly constituted commission created to investigate and make disposition of all matters and things concerning the South Carolina Dispensary, and counsel for the claimant in the above entitled cause having submitted an itemized statement of account of said claimant which shows overcharge against the State of South Carolina amounting to the sum of $454.50, and counsel representing said claimant consenting thereto;

Decree is hereby entered in favor of said Old 76 Distilling Co. against the State of South Carolina for the sum of $3,208.33. The balance of account, which from the books of the Dispensary appears to stand open in favor of Old 76 Distilling Co. is for the sum of $3,662.83; the amount of $454.50 being the aggregate amount of said overcharge is hereby deducted therefrom, which leaves due the said claimant the sum of $3,208.33.

It is further decreed that warrant issue in behalf of said claimant for said sum hereby decreed to be due.

This 3rd day of March, 1908.

W. J. MURRAY, Comr.
JOHN McSWEEN, Com'r.
C. K. HENDERSON, Com'r.

State Dispensary
Commission.

STATE OF SOUTH CAROLINA,
County of Richland.

This is to certify that the above is a true and correct duplicate original of the decree of the Commission therein mentioned in the above stated case.

This 4th day of March, 1908.

JOHN McSWEEN, Secretary.

Claim on Account of Sales to State Dispensary.

(239)

J. F. Beckman & Co.
vs.
The State of South Carolina.

The foregoing matter coming on for trial before the duly constituted commission created to investigate and make disposition of all matters and things concerning the South Carolina Dispensary, and counsel for the claimant in the above entitled cause having submitted an itemized statement of account of said claimant which shows overcharge against the State of South Carolina amounting to the sum of $163.48, and counsel representing said claimant consenting thereto;

Decree is hereby entered in favor of said J. F. Beckman & Co. against the State of South Carolina for the sum of $2,561.22. The balance of account, which from the books of the Dispensary appears to stand open in favor of J. F. Beckman & Co. is for the sum of $2,724.70; the amount of $168.48 being the aggregate amount of said overcharges is hereby deducted therefrom, which leaves due the said claimant the said sum of $2,561.22.

It is further decreed that warrant issue in behalf of said claimant for said sum hereby decreed to be due.

This 4th day of March, 1908.

W. J. MURRAY, Comr.
JOHN McSWEEN, Com'r.
C. K. HENDERSON, Com'r.

State Dispensary
Commission.

STATE OF SOUTH CAROLINA,
County of Richland.

This is to certify that the above is a true and correct duplicate original of the decree of the Commission therein mentioned in the above stated case.

This 4th day of March, 1908.

JOHN McSWEEN, Secretary.

Claim on Account of Sales to State Dispensary.

(240)

Duplicate Original.

Paul Jones & Co.
vs.
The State of South Carolina.

The foregoing matter coming on for trial before the duly constituted commission created to investigate and make disposition of all matters and things concerning the South Carolina Dispensary, and counsel for the claimant in the above entitled cause having submitted an itemized statement of account of said claimant which shows overcharges against the State of South Carolina amounting to the sum of $6,248.75, and counsel representing said claimant consenting thereto;

Decree is hereby entered in favor of the said Paul Jones & Co. against the State of South Carolina for the sum of $14,927.88. The balance of account, which from the books of the Dispensary appears to stand open in favor of Paul Jones & Co., is for the sum of $21,176.63; the amount of $6,248.75 being the aggregate amount of said overcharge is hereby deducted therefrom, which leaves due the said claimant the said sum of $14,927.88.

It is further decreed that warrant issue in behalf of said claimant for said sum hereby decreed to be due.

This 18th day of February, 1908.

W. J. MURRAY, Comr.
JOHN McSWEEN, Com'r.
C. K. HENDERSON, Com'r.

State Dispensary
Commission.

STATE OF SOUTH CAROLINA,
County of Richland.

I hereby certify that the above and foregoing is a true and correct duplicate original of the decree of the Commission therein mentioned in the above stated case.

This March 3d, 1908.

JOHN McSWEEN,
Secretary of Commission.

Claim on Account of Sales to State Dispensary.

(241)

Duplicate Original.

Anheuser-Busch Brewing Association
vs.
The State of South Carolina.

The foregoing matter coming on for trial before the duly constituted Commission created to investigate and make disposition of all matters and things concerning the South Carolina Dispensary, and counsel for the claimant in the above entitled cause having submitted an itemized statement of account of said claimant which shows overcharges against the State of South Carolina, amounted to the sum of $10,047.00, and counsel representing said claimant consenting thereto;

Decree is hereby entered in favor of said Anheuser-Busch Brewing Association against the State of South Carolina for the sum of $9,504.09. The balance of account which from the books of the Dispensary appears to stand open in favor of Anheuser-Busch Brewing Association is for the sum of $19,551.09, the amount of $10,047.00 being the aggregate amount of said overcharges is hereby deducted therefrom, which leaves due the said claimant the said sum of $9,504.09.

It is further decreed that warrant issue in behalf of said claimant for said sum hereby decreed to be due.

This 25th day February, 1908.

W. J. MURRAY, Com'r.
JOHN McSWEEN, Com'r.
C. K. HENDERSON, Com'r.

State Dispensary
Commission.

STATE OF SOUTH CAROLINA,
County of Richland.

I hereby certify that the above and foregoing is a true and correct duplicate original of the decree of the Commission therein mentioned in the above stated case.

This March 3d, 1908.

JOHN McSWEEN,
Secretary of Commission.

Claim on Account of Sales to State Dispensary.

(242)

Duplicate Original.

Belroy Distilling Co.
vs.
The State of South Carolina.

The foregoing matter coming on for trial before the duly consituted Commission created to investigate and make disposition of all matters and things concernings the South Carolina Dispensary, and counsel for the claimant in the above entitled cause having submitted an itemized statement of account of said claimant which shows overcharges against the State of South Carolina amounting to the sum of $2,004.16, and counsel representing said claimant consenting thereto;

Decree is hereby entered in favor of said Belroy Distilling Co. against the State of South Carolina for the sum of $38,004.17. The balance of account, which from the books of the Dispensary appears to stand open in favor of Belroy Distilling Co. is for the sum of $40,008.33; the amount of $2,004.16 being the aggregate amount of said overcharges is hereby de-

ducted therefrom, which leaves due the said claimant the sum of $38,004.17.

It is further decreed that warrant issue in behalf of said claimant for said sum hereby decreed to be due.

This 4th day of March, 1908.

W. J. MURRAY, Com'r.
JOHN McSWEEN, Com'r.
C. K. HENDERSON, Com'r.

State Dispensary
Commission.

STATE OF SOUTH CAROLINA,
County of Richland.

This is to certify that the above is a true and correct duplicate original of the decree of the Commission therein mentioned in the above stated case.

This 4th day of March, 1908.

JOHN McSWEEN,
Secretary Disp. Commission.

Claim on Account of Sales to State Dispensary.

(243)

Duplicate Original.

Big Four Distilling Co.
vs.
The State of South Carolina.

The foregoing matter coming on for trial before the duly constituted Commission created to investigate and make disposition of all matters and things concerning the South Carolina Dispensary, and counsel for the claimant in the above entitled cause having submitted an itemized statement of account of said claimant which shows overcharges against the State of South Carolina, amounting to the sum of $270.57 and counsel representing said claimant consenting thereto;

Decree is hereby entered in favor of said Big Four Distilling Co. against the State of South Carolina for the sum of $4,238.94. The balance of account, which from the books of the Dispensary appears to stand open in favor of the Big Four Distilling Co. is for the sum of $4,509.51; the amount of $270.57 being the aggregate amount of said overcharge is here-

by deducted therefrom, which leaves due the said claimant the sum of $4,238.94.

It is further decreed that warrant issue in behalf of said claimant for said sum hereby decreed to be due.

This 4th day of March, 1908.

W. J. MURRAY, Com'r.
JOHN McSWEEN, Com'r.
C. K. HENDERSON, Com'r.

State Dispensary
Commission.

STATE OF SOUTH CAROLINA,
County of Richland.

This is to certify that the above is a true and correct duplicate original of the decree of the Commission therein mentioned in the above stated case.

This 4th day of March, 1908.

JOHN McSWEEN, Secretary.

Claim on Account of Sales to State Dispensary.

(244) Duplicate Original.

H. A. Thierman & Co.
vs.
The State of South Carolina.

The foregoing matter coming on for trial before the duly constituted Commission created to investigate and make deposition of all matters and things concerning the South Carolina Dispensary, and counsel for the claimant in the above entitled cause having submitted an itemized statement of account of said claimant which shows overcharges against the State of South Carolina amounting to the sum of $553.70, and counsel representing said claimant consenting thereto;

Decree is hereby entered in favor of said H. A. Thierman & Co. against the State of South Carolina for the sum of $8,674.60. The balance of account, which from the books of the Dispensary appears to stand open in favor of H. A. Thierman & Co. is for the sum of $9,228.30; the amount of $553.70 being the aggregate amount of said overcharges is hereby deducted therefrom, which leaves due the said claimant the said sum of $8,674.60.

It is further decreed that warrant issue in behalf of said claimant for said sum hereby decreed to be due.

This 4th day of March, 1908.

W. J. MURRAY, Com'r.
JOHN McSWEEN, Com'r.
C. K. HENDERSON, Com'r.

State Dispensary
Commission.

STATE OF SOUTH CAROLINA,
County of Richland.

This is to certify that the above is a true and correct duplicate original of the decree of the Commission therein mentioned in the above stated case.

This 4th day of March, 1908.

JOHN McSWEEN, Secretary.

Claim on Account of Sales to State Dispensary.

(245) Duplicate Original.

D. Sachs & Sons
vs.
The State of South Carolina.

The foregoing matter coming on for trial before the duly constituted Commission created to investigate and make disposition of all matters and things concerning the South Carolina Dispensary, and counsel for the claimant in the above entitled cause having submitted an itemized statement of account of said claimant which shows overcharges against the State of South Carolina amounting to the sum of $541.28, and counsel representing said claimant consenting thereto;

Decree is hereby entered in favor of said D. Sachs & Sons against the State of South Carolina, for the sum of $8,480.05. The balance of account, which from the books of the Dispensary appears to stand open in favor of D. Sachs & Sons is for the sum of $9,021.33; the amount of $541.28 being the aggregate amount of said overcharges is hereby deducted therefrom, which leaves due the said claimant the sum of $8,480.05.

It is further decreed that warrant issue in behalf of said claimant for said sum hereby decreed to be due.

This 4th day of March, 1908.

W. J. MURRAY, Com'r.
JOHN McSWEEN, Com'r.
C. K. HENDERSON, Com'r.

State Dispensary
Commission.

STATE OF SOUTH CAROLINA.
County of Richland.

This is to certify that the above is a true and correct duplicate original of the decree of the Commission therein mentioned in the above stated case.

This 4th day of March, 1908.

JOHN McSWEEN, Secretary.

Claim on Account of Sales to State Dispensary.

(246) Duplicate Original.

Maring-Hart Co.
vs.
The State of South Carolina.

The foregoing matter coming on for trial before the duly constituted Commission created to investigate and make disposition of all matters and things concerning the South Carolina Dispensary, and counsel for the claimant in the above entitled cause having submitted an itemized statement of account of said claimant which shows overcharges against the State of South Carolina amounting to the sum of $341.10, and counsel representing said claimant consenting thereto;

Decree is hereby entered in favor of said Maring-Hart Co. against the State of South Carolina, for the sum of $15,506.84. The balance of amount, which from the books of the Dispensary appears to stand open in favor of Maring-Hart Co. is for the sum of $15,847.44; the amount of $341.10 being the aggregate amount of said overcharges is hereby deducted therefrom, which leaves due the said claimant the said sum of $15,506.34.

It is further decreed that warrant issue in behalf of said claimant for said sum hereby decreed to be due.

This 4th day of March, 1908.

W. J. MURRAY, Com'r.
C. K. HENDERSON, Com'r.
JOHN McSWEEN, Com'r.

State Dispensary Commission.

STATE OF SOUTH CAROLINA,
County of Richland.

(247) I hereby certify that the decree hereto attached is a full, complete and correct duplicate original of the decree rendered in the case of Maring-Hart Co. *v.* The State of South Carolina, which was this day tried before the State Dispensary Commission and that the decree rendered therein was consented to by counsel for claimant.

This March 4th, 1908.

JOHN McSWEEN,
Secretary of Commission.

Claim on Account of Sales to State Dispensary.

(248)

H. Rosenthal & Son.
vs.
The State of South Carolina.

The foregoing matter coming on for trial before the duly constituted Commission created to investigate and make disposition of all matters and things concerning the South Carolina Dispensary, and counsel for the claimant in the above entitled cause having submitted an itemized statement of account of said claimant which shows overcharges against the State of South Carolina amounting to the sum of $904.82, and counsel representing said claimant consenting thereto;

Decree is hereby entered in favor of the said H. Rosenthal & Son against the State of South Carolina for the sum of $3,619.29. The balance of account, which from the books of the Dispensary appears to stand open in favor of H. Rosenthal & Son is for the sum of $4,524.11; the amount of $904.82 being the aggregate amount of said overcharges is hereby deducted therefrom, which leaves due the said claimant the said sum of $3,619.29.

It is further decreed that warrant issue in behalf of said claimant for said sum hereby decreed to be due.

This 4th day of March, 1908.

W. J. MURRAY, Com'r.
JOHN McSWEEN, Com'r.
C. K. HENDERSON, Com'r.

State Dispensary
Commission.

THE STATE OF SOUTH CAROLINA,
County of Richland.

This is to certify that the above is a true and correct copy of the decree and order of the Commission in the foregoing case.

This 4th day of March, 1908.

JOHN McSWEEN, Secretary.

Claim on Account of Sales to State Dispensary.

(249)

Augusta Brewing Co.
vs.
The State of South Carolina.

The foregoing matter coming on for trial before the duly constituted Commission created to investigate and make disposition of all matters and things concerning the South Carolina Dispensary, and counsel for the claimant in above entitled cause having submitted an itemized statement of account of said claimant, and overcharges against the State of South Carolina amounting to the sum of $403.75, being shown and counsel representing said claimant consenting thereto;

Decree is hereby entered in favor of said Augusta Brewing Co. against the State of South Carolina for the sum of $1,211.25. The balance of account, which from the books of the Dispensary appears to stand open in favor of said Augusta Brewing Co. is for the sum of $1,615.00; the amount of $403.75 being the aggregate amount of said overcharges is hereby deducted therefrom which leaves due the said claimant the said sum of $1,211.25.

It is further decreed that warrant issue in behalf of said claimant for said sum hereby decreed to be due.

This 31st day of January, 1908.

W. J. MURRAY, Com'r.
JOHN McSWEEN, Com'r.
C. K. HENDERSON, Com'r.

State Dispensary
Commission.

STATE OF SOUTH CAROLINA,
County of Richland.

I hereby certify that the above and foregoing is a true and correct duplicate original of the decree of the Commission therein named, in the case therein stated.

This March 4th, 1908.

JOHN McSWEEN,
Secretary of Commission.

Prayer of Dispensary Commission Joining in Petition of Frank G. Tullidge Company et al.

(250) Filed March 5th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

Wilson Distilling Company et al., Petitioners,
against
W. J. Murray et al., Defendants.

The defendants, the State Dispensary Commission, join in the prayer of the intervening petition of The Frank G. Tullidge Company et al., herein, without waiving their right to object to the jurisdiction of the court.

W. J. MURRAY, Commissioner.
C. K. HENDERSON, Commissioner.
JOHN McSWEEN, Commissioner.

State Dispensary
Commission.

Filed March 5th, 1908.

J. C. PRITCHARD,
U. S. Circuit Judge.

Order Authorizing Dispensary Commission to Pay Out Certain Funds.

(251) Filed 5th day March, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

Wilson Distilling Company et al., Petitioners,
against
W. J. Murray et al., Defendants.

This case came on for a hearing upon the verified intervening petition of the Frank G. Tullidge Company et al., and the duly certified copies of the decrees of the State Dispensary Commission, thereto attached, and the application of the State Dispensary Commission, on consideration whereof the court finds that said petitioners are entitled to the relief prayed by them, and it is accordingly ordered that the State Dispensary Commission of South Carolina be, and they are hereby authorized to pay out of the funds in their hands the amounts so found by them to be due, and to issue warrants or checks in proper form therefor upon the depositions, to-wit:

To The Frank G. Tullidge Company,	$ 1,049.69
To The Live Oak Distilling Company,	26,190.82
To Joseph A. Magnus & Company,	16,648.76
To The Old 76 Distilling Company,	3,208.33
To J. F. Beekman & Company,	2,561.22
To Paul Jones & Company,	14,927.88
To The Anheuser-Busch Brewing Association,	9,504.09
To The Belroy Distilling Company,	38,004.17
To The Big Four Distilling Company,	4,238.94
To H. A. Thierman & Company,	8,674.60
To D. Sachs & Sons,	8,480.05
To The Maring-Hart Company,	15,506.34
To H. Rosenthal & Son,	3,619.29
To Augusta Brewing Company,	1,211.25

(252) Said Dispensary Commission are authorized to issue their warrants or checks for said sums in favor of said parties or their attorneys, and the depositories in which the funds of said Commission are deposited are authorized to pay the same, and the injunctions heretofore issued in this case and in the case of the Fleischmann Company against W. J. Murray et al.,

are hereby modified accordingly and the funds necessary to pay said checks or warrants are hereby released from the operation of said injunctions.

J. C. PRITCHARD,
U. S. Circuit Judge.

March 5th, 1908.

Petition of Messrs. Merrick & Barnard.

(253) Filed March 5th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT, AT CHARLESTON.

The Wilson Distilling Company et al.,
vs.
W. J. Murray and others.

Petition of Merrick & Barnard.

Duff Merrick and Alf. S. Barnard, partners, under the firm name of Merrick & Barnard, hereby petition the court for leave to personally intervene in this suit and represent and show unto the court as follows:

That they are practicing attorneys at law, residing at Asheville, North Carolina, and have heretofore been duly admitted to practice in this court.

That they have heretofore been regularly employed by the Belroy Distilling Company and The H. A. Thierman Company, to represent them in the collection of their several claims against the defendants in this suit, and have performed many legal services in connection with the prosecution of said claims, for which they have been paid nothing by the said claimants.

That, without consulting your petitioners and without their knowledge, said Belroy Distilling Company and said The H. A. Thierman Company, have compromised and settled their said claims against said defendants, and have petitioned this court for an order permitting same to be paid out of the funds in said defendants' hands, the disposition of which has heretofore been enjoined by this court which order, as your petitioners are informed and believe, the court will grant, or has granted.

That if the amounts so due said claimants so represented by your petitioners shall be paid, your petitioners fear that they will have difficulty in securing prompt payment for their pro-

per charges for services, unless the control of the amounts sever-
(254) ally due them shall be retained by this court until your petitioners' claims for services have been adjusted.

Wherefore, your petitioners pray for the court for an order directing that the amounts severally due to the said Belroy Distilling Company and said the H. A. Thierman Company, be held by some proper person pending the adjustment and settlement of the fees due your petitioners as aforesaid.

This March 5th, 1908.

MERRICK & BARNARD.

Order to Pay Lawrence Maxwell, Jr., Amounts Due Belroy Distilling Co. and H. A. Theirman & Co.

(255) Filed March 5, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT.

Wilson Distilling Company et al.
vs.
W. J. Murray et al.

It is ordered by the court that the amounts severally due *in* the Belroy Distilling Company and H. A. Theirman & Company by the State Dispensary Board of South Carolina, this day directed to be paid by the court upon the petition of said Belroy Distilling Company and said Theirman & Company, and others, shall be paid to Lawrence Maxwell, Jr., Esq., attorney filing said petition and held by him until said Belroy Distilling Company and said H. A. Theirman & Company have made satisfactory settlement for fees due to Merrick & Barnard, Attys., in connection with their said claims against said Dispensary Board, on the further order of the court it having been made to appear satisfactorily to the court that said Belroy Distilling Co. and said H. A. Theirman & Company have heretofore employed said Merrick and Barnard as attorneys at law to represent them in collecting said claims.

March 5th, 1908.

J. C. PRITCHARD,
U. S. Circuit Judge.

Petition of New York and Kentucky Company and Order Thereon.

(256) Filed March 9th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

Wilson Distilling Company et al., Complainants, *vs.* W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, constituting the State Dispensary Commission of South Carolina, and W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, individually, Defendants.	In Equity.

To the Honorable the Judges of the Circuit Court of the United States for the District of South Carolina:

The petition of the New York and Kentucky Company respectfully shows:

1. That the plaintiff, New York and Kentucky Company, was at the times hereinafter mentioned and now is a corporation duly chartered and organized under the laws of the State of New York and having its place of business in the City of Rochester in said State.

2. That heretofore during the years 1905 and 1906, viz.: from the 6th day of November, 1905, to the 25th day of January, 1906, both inclusive, your petitioner sold to the State Dispensary of South Carolina, through its directors who were the proper officers authorized by law to purchase wines and liquors, for the said Dispensary whiskies and other liquors to the amount and value of $61,995.64 and your petitioner shipped said goods to the State Dispensary, and the same were accepted by it through its duly authorized officers, and as your petitioner is informed and believes a large portion thereof were sold by said Dispensary at a large profit, the portion not so sold being hereinafter referred to as returned; that an invoice and account of the goods so sold and delivered, was duly rendered by your (257) petitioner to said Dispensary through its proper officers and agents; and that the price of said goods was agreed upon between the officers of said Dispensary and your petitioner; that there has been paid on the said goods the sum of $18,062.63 and that certain liquors to the value of $17,276.19 have been

returned by the said Dispensary Commission and accepted by your petitioner; that the balance is justly due your petitioner and that the price at which said liquors were sold to the Dispensary as above stated were fair and reasonable.

3. That your petitioner is entitled to be paid the sum due as alleged out of the funds described in the original and amended petitions filed in the above entitled cause; that it has an interest in the subject matter of said cause, and it is necessary for it to intervene in said cause to protect its right and interest in the said subject matter; that payment has been and still is refused.

4. That your petitioner is desirous of intervening in the above stated cause in order to protect its respective interests and to be made a party complainant therein; it adopts the several allegations and prayers of the petition filed therein and desires leave to file such further pleadings as may be meet and proper in the premises.

Wherefore petitioner prays that this intervention be allowed, that it be made a party complainant in said cause, and that this intervention be filed as a part of the record in said cause, and that it be granted all the relief prayed for by the complainant in the original and amended bills.

NEW YORK AND KENTUCKY COMPANY,
By WESTON & AYCOCK, Attorneys.

STATE OF SOUTH CAROLINA,
County of Richland.

Before me personally appeared W. T. Aycock, who, being duly sworn, says that he is one of the attorneys for the intervening party here in New York and Kentucky Co., a corporation, and that he makes said verification of this bill on behalf of the same; that no officer or agent of said corporation is within the District of South Carolina to the knowledge of the deponent at the time of preparing the foregoing petition; that the said foregoing petition is made upon information and belief conveyed to deponent by officers and agents of said intervening creditor, and that he believes the allegations thereof to be true.

W. T. AYCOCK.

Sworn to and subscribed before me this 5th day of March, 1908.

J. TEAM GETTYS,
[Seal] Notary Public for South Carolina.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

(258)

Wilson Distilling Company et al., Complainants,
vs.
W. J. Murray et al., constituting the State Dispensary Commission of South Carolina, and W. J. Murray et al., individually, Defendants.
} In Equity.

Order.

Upon reading and considering the petition of New York and Kentucky Company, of Rochester, New York, which appears through counsel and asks and seeks to be made a party complainant herein, intervening for that purpose.

It is Ordered

That it be and it hereby permitted to intervene and it is hereby made a party complainant herein and granted leave to file the foregoing petition as a part of the record in the above named cause with leave to file such other and further pleadings as may be necessary and proper in the premises.

This 7th day of March, 1908.

J. C. PRITCHARD,
U. S. Circuit Judge.

Return of W. J. Murray et al.

(259) Filed 9th day March, 1908.

UNITED STATES OF AMERICA, DISTRICT OF SOUTH CAROLINA,
IN THE CIRCUIT COURT, FOURTH CIRCUIT.

Wilson Distilling Company et al., Complainants,
vs.
W. J. Murray et al., Defendants.
} In Equity.

And now come the defendants, W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, upon whom have been served the Amended and Supplemental Complaint herein and the Order to Show Cause herein of February 19th, 1908, requiring them to show cause why the relief praved for in said bill should not be granted and why a Receiver should not be appointed and injunction issued as therein praved, and

without submitting themselves to the jurisdiction of this Honorable Court but on the contrary, insisting that it is without jurisdiction in the premises, and reserving the right to demur, plead or answer in accordance with the rules of practice and procedure which obtain in this court and solely in response to the said Order to Show Cause, respectfully show:

1.

That the said complainants by and in said bill have not stated such a cause as doth or ought to entitle them to any such relief as is thereby sought or prayed for from or against the defendants herein or any of them.

2.

That this suit is and on the face of complainants' bill and from the allegations therein contained appears to be in effect a suit against the State of South Carolina, seeking as it does, to coerce the said State through it officers into the payment of al- (260) leged claims against it, to substitute this court in the place of its officers in the exercise of the authority, discretion and jurisdiction conferred upon them by Statute and to usurp their functions to take the funds of the said State out of the hands of its officers, and place them in the hands of a receiver or receivers of this court. And to enjoin and restrain these defendants as the officers of the said State from paying over or disposing of said funds as the said State has directed or may hereafter direct; and that this suit is therefore without the jurisdiction of this court under the provisions of the Eleventh Amendment to the Constitution of the United States of America.

3.

That the State of South Carolina is, and on the face of complainants bill and from the allegations therein contained, appears to be an indespensable party to this suit, but that said State has not been made a party on the record and under the provisions of the said Eleventh Amendment to the X Constitution of the United States of America, cannot be made a party to the record without its consent, which consent has never been given.

4.

That the defendants as the State Dispensary Commission under the Act of the General Assembly of the State of South Carolina creating the same entitled "An act to provide for the

disposition of all property connected with the State Dispensary and to wind up its affairs," approved February 16th, 1907, and the Acts amendatory thereto constitute a court of the State of South Carolina within the meaning of Section 720 of the Revised Statutes of the United States which declares that, "The Writ of Injunction shall not be granted by any Court of the United States to stay proceedings in any Court of a State except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

5.

That said bill of multifarious as to the parties complainant in that said parties complainant are without a common interest in the subject of litigation, have no connection with each other, (261) and are seeking thereby each for itself the collection of its own alleged separate and distinct claim and the protection of its own alleged separate and distinct interest.

6.

That it appears upon the face of the complainant's bill that it sets forth no ground of equitable jurisdiction such as insolvency or otherwise upon which the jurisdiction in equity of this Honorable Court can attach, it appearing from the allegations of paragraph 12 of the said bill that the funds in the hands of the defendants as constituting the said State Dispensary Commission are about two hundred thousand dollars ($200,000) in excess of the aggregate of all the claims against the State in connection with the business of its said Dispensary.

7.

And further showing cause herein, these defendants, in regard to paragraphs 1, 2 and 3 of the said bill, admit the allegations therein contained.

8.

That in regard to paragraph 4 of said bill these defendants deny the allegations thereof so far as the same may be inconsistant with the Acts of the Legislature of the State of South Carolina, therein referred to, under a proper construction thereof, and further they aver as follows, that "The manufacture, sale, barter, and exchange of intoxicating liquors" was prohibited, and the State of South Carolina, in the exercise of her police powers engaged in and monopolized the liquor traffic, and to

that end appointed and established the State Dispensary and appropriated fifty thousand dollars ($50,000) for commencing the said business. Said Dispensary however, had no existence or entity or credit separate and apart from the said State, it was a mere agency of the State for the conduct and operation of her business. The business belonging to the State. All purchases, therefore, were made by the State and upon her credit. All profits of the business and the stock on hand at the time the State Dispensary was abolished belong to the State.

9.

(262) That, in regard to paragraph 5 of said bill, these defendants admit that some time during the year of 1906, or the early part of 1907, the complainants did undertake to sell to the State of South Carolina through its agents, the said Board of Directors of the State Dispensary, certain *alcholic* liquors and under and in pursuance of said attempted sale did deliver the same to the Board of Directors of the State Dispensary for said State, but they allege that the said attempted sales were not made in accordance with law and were in violation of the Statutes of the State of South Carolina relating to the said State Dispensary and were and are illegal and void and upon information and belief the defendants allege that the said pretended sales were attempted to be made in pursuance of a conspiracy between the complainants and officers of the State to cheat and defraud the State by charging and collecting from the State prices for said alcoholic liquors largely in excess of the fair and market value thereof and that in attempting to make such sales the complainants did not comply with and violate the law of the State of South Carolina relative to the sale and purchase of alcoholic liquors in connection with the said State Dispensary in the following particulars, among others, to-wit:

(a) They failed to accompany their bids, or all of them, with the chemical analysis of the liquor offered for same.

(b) They failed to furnish the bonds required by law to insure the compliance by them with the terms of the contract of purchase and sale between them and the State Dispensary.

(c) They violated said law in that they constantly had agents, representatives and solicitors in the State for the purpose of soliciting the purchase of their goods by said State, and that through its said agents and representatives they solicited business from said board of directors and co-operated with the board in disregarding the law in other particulars.

And these defendants further allege that even if said sales were not illegal and void yet upon a proper accounting between complainants and the State there would be left no balance whatever owing on their said claims or any of them.

And except as hereinbefore admitted these defendants deny each and every allegation in said paragraph 5 of said bill of complaint continued.

(263)

10.

That, in regard to paragraph 6 of the said bill, these defendants admit the allegations thereof, but they allege that since the passage of said Act and at its regular session in the year 1908, the General Assembly of the State of South Carolina passed an Act amending the Acts set out in said paragraph 6, which said amendatory Act was duly approved on the 24th day of February, 1908, and which, among other things, provides as follows:

"Section 9. That the Commissioners of the Sinking Fund be and they are hereby authorized and required, upon being notified by the State Dispensary Commission, that the real estate heretofore used for the offices and warerooms, etc., of the Dispensary, and located at the corner of Gervais and Huger streets, in the City of Columbia, is no longer in actual use, to sell the same under and pursuant to the terms of section 91, Code of Laws, South Carolina, Vol. 1, 1902, provided that the said property shall not be sold for less than seventy-five thousand dollars ($75,000) and the proceeds of such sale shall be turned into the State Treasury and applied to school purposes, as provided for by the Constitution of 1895, and the Acts of the Legislature carrying out the same.

Section 10. That the judgment heretofore rendered in the Court of Common Pleas for Richland County against U. B. Hammet and W. O. Tatum, on account of liquors improperly seized by them and used by the State, together with the costs and expenses of defending in the said suit, be paid by the Dispensary Commission out of the assets now in their hands, belonging to the State and arising from the assets of the Dispensary.

Section 11. That the said Commission is hereby declared to possess full power to pass upon, fix and determine all claims against the State growing out of dealings with the Dispensary. And to pay for the State any and all just claims, which have been submitted to and determined by it and no other, out of the

assets of the Dispensary which have been or may hereafter be collected by the said State Dispensary Commission; Provided, that each and every person, firm or corporation, presenting a claim or claims to said Commission, shall have the right to appeal to the Supreme Court, as in cases at law; Provided further, That notice of intention to appeal shall be served upon said Commission within ten days of rendition of judgment by the said Commission, and the practice in taking all steps in perfecting the appeal shall conform to the practice in other appeals to the Supreme Court.

Section 12. That no funds arising from the sale of the assets of the former State Dispensary, or from the Collection of debts due the said Dispensary, or moneys delivered by the State Treasury to said Commission, shall be paid out for any purpose, or to any person whatsoever, except upon the check of (264) of the Chairman of said Commission, countersigned by the Treasurer of the State of South Carolina. And the Treasurer of the State of South Carolina shall countersign such checks as may be presented by the Chairman of said Commission only upon presentation of the same together with a certificate of said Commission, or a majority thereof which certificate shall show; that the said check is issued in payment of some expense provided for the Statute; or necessarily incident to closing up the affairs of the Dispensary or for services rendered said Commission in closing up the affairs of said Dispensary; or contracted for in accordance with law by said State Dispensary Commission; or that it is in payment of a claim of a creditor which has been adjudged by said Commission to be due and upon such adjudication ordered paid."

11.

That in regard to paragraph 7 of the said bill these defendants admit their qualification and organization as the State Dispensary Commission, their entry upon the discharge of their duties and that they took possession as such Commission and for the State of the liquors and supplies on hand connected with the State Dispensary and also admit that the State Treasurer turned over to them as such Commission a certain fund then in his hands but whether his action in this regard was or was not authorized and legal is entirely a question of the proper construction of the said Act of February 16, 1907, creating said Commission. And these defendants further admit that they have collected many of the debts due the State in connection with the said State Dispensary and that they now have on hand and on deposit in a number of banks about eight hundred thou-

sand dollars ($800,000), and that the same is applicable as directed by the said Act and Acts amendatory thereto and as otherwise directed by other Acts of the General Assembly of the State of South Carolina.

And except as herein admitted these defendants deny such and every allegation in said paragraph 7 contained.

12.

That, in regard to paragrphs 8, 9, 10 and 11 of the said bill, these defendants admit that the said complainants therein mentioned at some time during the year 1906, or the year 1907 did undertake to sell to the State of South Carolina, through its (265) agents the said Board of Directors of the State Dispensary, certain alcoholic liquors and under and in pursuance of such attempted sales did deliver the same to the said Board of Directors of the State Dispensary for the said State, but they allege the same said attempted sales were not made in accordance with law and were in violation of the Statutes of the State of South Carolina relating to the said State Dispensary and were and are illegal and void; and upon information and belief the defendants allege that the said pretended sales were attempted to be made in pursuance of a conspiracy between the complainants and officers of the State to cheat and defraud the State by charging and collecting from the State prices for said alcoholic liquors largely in excess of the fair and market value thereof and that in attempting to make such sales the complainants did not comply with and violated the law of the State of South Carolina relative to the sale and purchase of alcoholic liquors in connection with the said Dispensary in the following particulars, among others, to wit:

(a) They failed to accompany their bids, or all of them, with the chemical analysis of the liquor offered for same.

(b) They failed to furnish the bonds required by law to insure the compliance by them with the terms of the contract of purchase and sale between them and the State Dispensary.

(c) They violated said law in that they constantly had agents, representatives and solicitors in the State for the purpose of soliciting the purchase of their goods by said State, and that through its said agents and representatives they solicited business from said board of directors, and co-operated with the board in disregarding in other particulars.

And these defendants further allege that even if said sales were not illegal and void yet upon a proper accounting between complainants and the State there would be left no balance whatever owing on their said claims or any of them.

And except as hereinbefore admitted these defendants deny each and every allegation in said paragraph 5 of said bill of complaint contained.

13.

(266) That as regards paragraph 12 of the said bill they admit the allegations thereof except that the property and debts therein referred to as sold and collected were not the property of and debts due to the said Dispensary as therein alleged, but the property of and debts due to the State of South Carolina in connection with the said Dispensary; but these defendants deny that said funds are applicable to the payment of the alleged claims of the complainants except so far as said claims upon investigation by said Commission may be adjudged by said Commission to be just and valid claims against the State in whole or in part.

14.

That as regards paragraph 13 of said bill these defendants deny each and every allegation thereof.

15.

That, as regards paragraph 14 of said bill, these defendants admit the allegations thereof, except that they deny that said money is subject to withdrawal by said Commission, and allege that under the amendatory Act hereinbefore referred to, said funds can only be paid out upon the check of the Chairman of said Commission, countersigned by the Treasurer of the State of South Carolina under the circumstances and for the specific purposes in said amendatory Act; and except that these defendants allege that the said money is deposited to the credit of said Commission as the agents of the State of South Carolina and is legally and substantially in the possession of the said State, and subject to be checked out of said banks only as hereinbefore stated, and except that they deny that the said funds have not been mingled with other funds of the State.

16.

That, in regard to paragraph 15 of the said bill, these defendants deny each and every allegation therein contained, ex-

cept as the same may be hereinafter admitted. They have denied and do deny that the said funds in their hands are impressed with any trust in favor of complainants and that they owe any duty to the creditors of the State of South Carolina ((267) in connection with the business of the State Dispensary except as may be provided in the said Act of February 16, 1907, and said amendatory Act of February 24th, 1908, and they admit that under said legislation they do claim exclusive jurisdiction to investigate and pass upon the validity or invalidity of all claims against the State of South Carolina in connection with the said State Dispensary, subject only under said amendatory Act to appeal to the Supreme Court of the State, as therein provided for. And specially as regards subdivision "D" of said paragraph 15 these defendants refer to paragraph 21 of their return to the rule to show cause in the case of Fleischmann Company against these defendants now pending in this court and pray that same may be read herewith as a part of this return.

17.

That as regards paragraph 16 of said bill, these defendants deny each and every allegation therein contained.

18.

That in regard to paragraph 17 of the said bill these defendants admit that there are a large number of persons claiming to be creditors of the State in connection with the said State Dispensary, but they allege that all of these persons, including the complainants, have filed their said claims with the said commission for investigation and adjudication, which claims so filed are in number and amount in the aggregate to ———

And these defendants allege that none of these claimants have brought suit against the Commission in the State or Federal courts or otherwise than by filing same with the said Commission for investigation and adjudication as aforesaid except The Garrett Co., The Fleischmann Co., and the complainants herein who have brought suit in this Honorable Court and except such other persons as may have intervened in the said suits brought by these parties.

And these defendants further allege that after such delay as was necessarily involved in having the said claims properly audited by an Audit Company employed for that purpose and in the discharge of the duty imposed upon them by the said

Act creating the said Commission, they commenced on the day of 190 the work of investigating the said claims in order to ascertain and adjudicate their validity or invalidity (268) as required by said Act. But these defendants have been greatly harrassed and impeded in the prosecution of the said work and the discharge of the duties devolved upon them by the said Act by the said suits brought against them by the said parties in this court.

But notwithstanding such interruptions the defendants have proceeded with their said work down to the present time and are still proceeding with it.

Of the whole number of claims filed as aforesaid these defendant have investigated and adjudicated and ordered for payment as follows claims aggregating $ and these claims have not been paid before this only because of the injunctions issued by this court in the said suits brought in this court as aforesaid.

These defendants now have under investigation and in course of adjudication claims including the claims of the complainants herein, Anheuser Busch Brewing Association.

And these defendants say that so far all their adjudications of said claims have been accepted by the parties concerned as satisfactory although in all or nearly all of them it has been found that on account of overcharges against the State deductions have had to be made by the Commission from the amounts claimed and the defendants further say that they have given fair notice to all claimants whose claims are still unadjudicated to come in and prove their said claims and that they are ready to proceed with the investigation and adjudication of such claims as soon as such parties shall come in and present their proofs thereof.

And except as herein admitted these defendants deny each and every allegation in said paragraph 17 contained.

18.

And further showing cause, as required by said order, these defendants pray that reference may be had, as far as the same may be applicable to their return and the affidavits and other papers connected therewith, to a similar order to show cause issued in the case of The Fleischmann Company against these defendants now pending in this court, and that same so (269) so far as applicable may be treated as of this return and read herewith.

And having made return to said order to show cause, as required thereby, these defendants pray that their said return

be adjudged sufficient and the said order to show cause be vacated and discharged.

STEVENSON & MATHESON,
ABNEY & MULLER,
ANDERSON, FELDER, ROUNDTREE & WILSON,
J. FRASER LYON,
Solicitors for defendants.

STATE OF SOUTH CAROLINA,
County of Richland.

(270) W. J. Murray, being duly sworn, says that the foregoing return is true to their own knowledge, except as to those matters therein stated upon information and belief, and as to these matters, he believes it to be true.

W. J. MURRAY.

Sworn to before me this 6th day of March, 1908.

W. F. STEVENSON, [L. S.]
Notary Public for South Carolina.

Affidavit of T. M. Mordecai.

(271) Filed March 9th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT, AT CHARLESTON.

Wilson Distilling Co. et al.
vs.
W. J. Murray et al.
Affidavit of T. M. Mordecai.

T. M. Mordecai, being first duly sworn, deposes and says, that he is one of the counsel for the above named plaintiff, and in the absence of time to have this affidavit made by one of its officers, makes the same in its behalf.

That, as affiant is informed and believes, on Thursday, the 5th day of March, 1908, this Governor of the State of South Carolina, sent a message to the Legislature, of said State, which is now in session, copy of which message taken from "The State," a newspaper published at Columbia, in said State, and

which affiant is informed and believes is a true copy of said message; that affiant is further informed and believes that acting upon such message, there has been introduced in the General Assembly of said State, a bill directing the State Dispensary Board to turn the funds in their hands into the State Treasury of said State, said funds being the same enjoined by this court from being in any way paid out or changed until its further order.

That as affiant is advised and believes, there is danger thus arising of said funds being placed beyond the jurisdiction of this court, and plaintiffs prevented from recovering the amounts justly due them from the defendants, and otherwise irreparably damaged, unless this court take said fund immediately into its actual possession by the appointment of a receiver or receivers therefor.

T. M. MORDECAI,

Sworn to and subscribed before me this March 6th, 1908.

[Seal] EUGENE WAY,
Notary Public.

To the Honorable the Senate and House of Representatives of South Carolina.

(272) Owing to the fact that the funds of the State of South Carolina which are now in the hands of the commission to wind up the State Dispensary, are sought to be taken from their hands, and to be administered by the United States Court without the consent of your honorable bodies, the only department of the State Government which has the right to give consent that the State be sued;

And as the autonomy of the State must be maintained, and the rights to administer her funds by her own agents preserved, and feeling that you realize the great principle of State Sovereignty and the rights of a State under a Constitution of the United States.

I respectfully recommend such legislation, at this session of the legislature, as will protect the interests of the State and obviate the necessity for further action on your part.

Respectfully,

M. F. AXSEL, Governor.

Executive Chamber, Columbia, S. C., March 5th, 1908.

Order Appointing Temporary Receivers.

(273) Filed March 9th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT, AT CHARLESTON.

Wilson Distilling Co. et al., Complainants,
vs.
W. J. Murray et al., Defendants. } Order.

It appearing to the satisfaction of the court that pending the hearing and determination of the motion for the appointment of receivers in this cause, the funds heretofore enjoined in the hands of the defendants may be jeopardized and further delay being deemed inexpedient; upon due consideration it is ordered, adjudged and decreed that W. J. Murray, John McSween, C. K. Henderson, B. F. Arthur & Avery Patton, be, and they hereby are appointed temporary receivers of all and singular the moneys, funds, property, rights, credits and assets involved in this cause, and heretofore enjoined from being disposed of, especially all the money now in the hands of the defendants arising out of the sale of property belonging to the State Dispensary of South Carolina, or from the collection of debts due it, and all other moneys deposited to the credit of the defendants composing the State Dispensary Commission, and deposited to their credit with the various banks and depositories made parties hereto;

It is further ordered that the said W. J. Murray, John McSween, C. K. Henderson, B. F. Arthur and Avery Patton, temporary receivers as aforesaid, do forthwith take possession of all and singular the said property and assets, and deposit the same to their credit as temporary receivers in the several depositories in which the same are now deposited;

It is further ordered that the defendants W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, constituting the State Dispensary Commission, do forth-
(274) with pay over and deliver all such funds and property to said receivers, W. J. Murray, John McSween, C. K. Henderson, B. F. Arthur & Avery Patton by drawing their checks on the said several depositories in favor of the said temporary receivers, for the full amount of said respective deposits not heretofore drawn under the order and direction of this court, and each and every of the defendant banks and depositories are hereby ordered and directed to forthwith pay over and

transfer from the credit of said State Dispensary Commission to the credit of the said temporary receivers, the said respective sum or sums of money so deposited with them by said State Dispensary Commission;

It is further ordered that each of said temporary receivers do, within five days from the date of this order, give the usual bond as such receiver, each in the sum of fifty thousand dollars ($50,000) with surety or sureties to be approved by the United States Circuit Judge or the United States District Judge for the District of South Carolina, or the Clerk of this Court;

It is further ordered that the said receivers be and they hereby are invested and charged with the usual powers and duties of temporary receivers;

It is further ordered, adjudged and decreed that all of the parties to this cause, and all other persons whomsoever, their agents, servants and attorneys, be, and they hereby are restrained and enjoined from interfering in any way, directly or indirectly, with the receivers hereby appointed, or with their possession or control of the money, property and assets hereby ordered to be transferred to them.

This the 6th day of March, 1908.

J. C. PRITCHARD,
U. S. Circuit Judge.

Order Consolidating Causes and Appointing Receivers.

(275) Filed March 9th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT,

Wilson Distilling Company et al.
vs.
W. J. Murray and others,
and
The Fleischmann Company,
vs.
W. J. Murray and others.
} In Equity.

The above entitled cause came on to be heard this day before the undersigned Judge at Chambers, in Asheville, North Carolina, the first, to-wit: The Wilson Distilling Company et al. *vs.* W. J. Murray et al. upon a rule to show cause why the relief prayed for in the bill filed in said cause should not be granted, and why a receiver should not be appointed to take

charge of and administer all the funds in the hands of the defendants, constituting the State Dispensary Commission of South Carolina, and upon the defendants' return to said notice, and the traverse thereto, together with the affidavits, records, and other evidence submitted in connection therewith, and the second, to-wit, The Fleischman Company *vs.* W. J. Murray, and others, upon a motion by complainant for the appointment of a receiver, notice of said motion having been waived by the defendant in open court and in writing, for the purpose of the hearing of said motion, and both causes having been heard and the court being of the opinion that the temporary restraining order heretofore granted in the first cause should be continued in force until the final determination of said cause, and that the complainants therein are entitled to the injunction prayed for in their said bills, and, upon consideration of the records in said causes and the evidence now before the court, the court being of the opinion that the motions for a receiver ought to be granted:

It is now, on motion of the solicitors for all of the complainants, ordered, adjudged and decreed by the court that these causes be and they are hereby consolidated; that the temporary restraining order heretofore issued in the first entitled cause, be and the same is hereby continued in full force and effect, until the final determination of said suit, or until the further order of this court, and that the defendants and each of them, their agents, attorneys and employes, be, and they are, hereby, restrained and enjoined from interfering with, paying out or transfering to any person or persons whomsoever, or in any way disturbing or changing the present status of the fund now in their possession and control, except to transfer, pay over and deliver the same to the receivers named in this order;

And it is further ordered that an injunction *pendente lite* issue in accordance with this order;

And the court being of the opinion that it is necessary for the preservation of the said fund and the proper administration of the same, and for securing to the complainants the relief prayed for in their bills, that receivers should be appointed to take charge of and administer, all and singular, the moneys, funds, property, rights, credits and assets involved in these cases, and heretofore enjoined from being disposed of, especially all the money now in the hands of the defendants, arising out of the sale of property belonging to or connected with the State Dispensary of South Carolina, or from the collection of debts due to it, and also all moneys deposited to the credit of the defendants composing the State Dispensary Commission in the various banks and depositories which have been heretofore made parties to these causes,

It is, therefore, ordered, adjudged and decreed that Joseph A. McCullough, C. K. Henderson, and B. F. Arthur, be, and they are, hereby appointed receivers of this court for the purpose of holding and administering the trust fund now in the hands of the defendants, and that said receivers be, and they are, hereby, authorized, empowered and directed to take imme-
(277) diate possession of all and singular, the moneys, funds, property, rights, credits and assets heretofore mentioned;

And it is further ordered, adjudged and decreed that the defendants and each of them, be and they are, hereby, required and commanded to pay over and deliver to said receivers, upon demand made of them, all of said moneys, funds, property, rights, credits or assets, or any part of the same which either of said defendants may have in his or its possession and control, including all securities which the defendants constituting the State Dispensary Commission, hold to secure the re-payment of any money deposited by them, together with all interest which may have accrued on any money, together with all interest may have accrued on any money, *together with all interest which may have accrued on any money* so deposited by said acter, which the defendants, constituting the said State Dispensary Commission, now have in their possession or under their control, by virtue of the Act of the General Assembly of the State of South Carolina passed at its session held in 1907, creating the said State Dispensary Commission.

And it is further ordered, that each of said receivers do, within five days from the date of this order, give bond as such receivers, in the sum of $25,000.00, with surety or sureties to be approved by this court, or by the United States District Judge for the District of South Carolina.

And, it is further ordered that said receivers be and they are hereby, invested with all the powers and authority usually conferred upon receivers in like cases, and they are fully authorized to institute any and all actions or proceedings, and to take any other steps necessary for the purpose of collecting any assets which may come into their hands by virtue of their appointment as receivers in these causes;

And it is further ordered, adjudged and decreed, that all of the said parties to this cause and all other persons whomsoever, their agents and attorneys, be and they are hereby restrain-
(278) ed and enjoined from interfering in any way with the receivers hereby appointed, or with their possession and control of the money and other property hereby ordered to be transfered to them;

And it is further ordered that all and singular the creditors of the South Carolina State Dispensary be, and each of said creditors is, hereby, restrained and enjoined from prose-

cuting any suit or proceeding for the collection or enforcement of his claim against the defendants, except by leave of this court first had and obtained:

The clerk will, at once certify a copy of this order to each of the receivers named in this order.

J. C. PRITCHARD,
U. S. Circuit Judge.

March 7th, 1908.

Order Fixing Bonds of Complainants.

(279) Filed March 9th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT,

Wilson Distilling Company et al.
vs.
W. J. Murray et al.
and
The Fleischmann Company
vs.
W. J. Murray et al.
} In Equity.

It is ordered, that within ten days from the date hereof that the complainants in the case of Wilson Distilling Company et al. *vs.* W. J. Murray et al. in addition to the bond already filed, do file an additional bond in the sum of twenty-five hundred dollars, with surety to be approved by the judge of this court.

It is further ordered, that the Fleischmann Company do, within ten days from the date of this order, give the usual injunction bond in the sum of seven thousand five hundred dollars, with surety to be approved by the judge of this court.

It is further ordered, that the defendants have leave to apply at any time, upon ten days' notice to counsel, for an increase of said bonds.

J. C. PRITCHARD,
U. S. Circuit Judge.

Asheville, N. C., March 7th, 1908.

Oath of Joseph A. McCullough, Receiver.

(280) Filed March 13th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT,

Wilson Distilling Company et al.
versus
W. J. Murray et al.

The Fleischmann Company
versus
W. J. Murray et al.

} Consolidated causes In Equity.

OATH OF RECEIVER.

I, the undersigned, Joseph A. McCullough, having been by an order of the Circuit Court of the United States for the District of South Carolina appointed one of the receivers in the above entitled consolidated causes, do solemnly swear that I will faithfully perform the duties of that office and obey all of the orders of the court. So help me God.

JOS. A. McCULLOUGH.

Subscribed and sworn to before me this the 11th day of March, 1908.

WILTON H. EARLE, [L. S.]
[Seal] Not. Pub. for South Carolina.

Oath of B. F. Arthur, Receiver.

(281) Filed March 12th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT,

Wilson Distilling Company et al.
versus
W. J. Murray et al.

The Fleischmann Company
versus
W. J. Murray et al.

} Consolidated causes In Equity.

OATH OF RECEIVER.

I, the undersigned B. F. Arthur, having been by an order of the Circuit Court of the United States for the District of

South Carolina appointed one of the receivers in the above entitled consolidated causes, do solemnly swear that I will faithfully perform the duties of that office and obey all of the orders of the court. So help me God.

B. F. ARTHUR.

Subscribed and sworn to before me this the 11th day of March, 1908.

WILTON H. EARLE, [L. S.]
[Seal] Not. Pub. for South Carolina.

Oath of C. K. Henderson, Receiver.

(282) Filed March 13th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT,

Wilson Distilling Company et al.
versus
W. J. Murray et al.

The Fleischmann Company
versus
W. J. Murray et al.

} Consolidated causes In Equity.

OATH OF RECEIVER.

I, the undersigned C. K. Henderson, having been by an order of the Circuit Court of the United States for the District of South Carolina appointed one of the receivers in the above entitled consolidated causes, do solemnly swear that I will faithfully perform the duties of that office and obey all of the orders of the court. So help me God.

C. K. HENDERSON.

Subscribed and sworn to before me this the 11th day of March, 1908.

WILTON H. EARLE, [L. S.]
[Seal] Not. Pub. for South Carolina.

Surety Bonds. B. F. Arthur.

(283) Filed 12th March, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT.

Wilson Distilling Company et al.
against
W. J. Murray and others,
and
The Fleischmann Company
against
W. J. Murray and others.
} In Equity.

Know all men by these presents: That we, B. F. Arthur, of the town of Union, County of Union, and State of South Carolina, as principal, and Fidelity and Deposit Company of Maryland, a corporation organized under the laws of the State of Maryland, with its principal office in the City of Baltimore, State of Maryland, as surety, are held and firmly bound unto the United States of America in the sum of twenty-five thousand dollars, in lawful money of the United States, to be paid to the United States, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

Signed and sealed this tenth day of March, A. D., 1908.

The condition of this obligation is such, that whereas the above named B. F. Arthur was, on the seventh day of March, A. D., 1908, appointed a receiver in the above stated cases pending in said court, and he, the said B. F. Arthur, has accepted said appointment as a receiver with all the duties and obligations pertaining thereunto:

Now, therefore, if the said B. F. Arthur, receiver as aforesaid, shall obey such orders as such court may make in relation to said receivership, and shall faithfully and truly account for all moneys, assets and effects which may come into his posses-
(284) sion as receiver in the above entitled actions, and shall in all respects faithfully perform all his official duties as such receiver, then this obligation to be void; otherwise, to remain in full force and virtue.

B. F. ARTHUR, [Seal]
FIDELITY & DEPOSIT COMPANY OF MARYLAND,
By H. N. EDMUNDS, Attorney in fact.

Attest:
JAMES A. CATHCART, Agent.

Signed and sealed in presence of

STANYARN WILSON,
W. T. FOWLER.
As to B. F. Arthur.

M. E. WINGARD,
R. E. CARLISLE.
As to Fidelity & Deposit Company of Maryland.

Bond approved.

WM. H. BRAWLEY,
U. S. District Judge.

Bond of Joseph A. McCullough.

(285) Filed March 14th, 1908.

American Surety Company
of New York.
Capital $2,500,000.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE FOURTH JUDICIAL CIRCUIT, STATE OF SOUTH CAROLINA.

Wilson Distilling Company et al.
vs.
W. J. Murray et al.

The Fleischmann Company
vs.
W. J. Murray et al.

} In Equity.

Know all men by these presents, that we, Joseph A. McCullough, of Greenville, Greenville, County, South Carolina, as principal, and American Surety Company of New York, a corporation organized and existing under the laws of the State of New York, having an office and principal place of business at No. 100 Broadway, Borough of Manhattan, City of New York, and State of New York, as surety, are held and firmly bound unto the United States of America, in the sum of twenty-five thousand dollars ($25,000.00), in lawful money of the United States, to be paid to the said United States; for which payment well and truly to be made, we bind ourselves, and our heirs, executors, administrators and successors, jointly and sev-

erally, by these presents; and the principal hereby waives the benefit of his homestead exemption.

Signed and sealed this 11th day of March, A. D., 1908.

The condition of this obligation is such, that whereas the above named Joseph A. McCullough was on the 7th day of March, A. D., 1908, appointed receiver in the above stated cases pending in said court to take possession of the property of and wind up the business of the State Dispensary of the State of South Carolina, and he, the said Joseph A. McCullough has accepted said trust with all the duties and obligations pertain-
(286) ing thereunto.

Now, therefore, if the said Joseph A. McCullough, receiver as aforesaid, shall obey such orders as said court may make in relation to said trust, and shall faithfully and truly account for all the moneys, assets and effects of said State Dispensary of the State of South Carolina which shall come into his hands and possession, and shall in all respects faithfully perform all his official duties as said receiver, then this obligation to be void; otherwise to remain in full force and virtue.

JOSEPH A. McCULLOUGH, [Seal]
AMERICAN SURETY COMPANY OF NEW YORK,
By JOSEPH T. ORME,
Resident Vice-President.

Attest:
A. J. ORME,
[Seal] Resident Assistant Secretar-

Approved.

J. C. PRITCHARD,
U. S. Circuit Judge.

STATE OF NEW YORK,
County of New York.

(287) J. F. Kerr, being duly sworn, says: That he is an Assistant Secretary of the American Surety Company of New York; that said company is a corporation duly created, existing and engaged in business as a surety company under and by virtue of the laws of the State of New York, and has duly complied with all the requirements of the laws of said State applicable to said company, and is duly qualified to act as surety under such laws. That said company has also complied with and is duly qualified to act as surety under the Act of Con-

gress of August 13, 1894, entitled "An Act relative to recognizances, stipulations, bonds and undertakings and to allow certain corporations to be accepted as surety thereon," That the within is a true copy of the last statement of the assets and liabilities of said company as rendered pursuant to section 4 of said Act of Congress; that said statement is true and that said American Surety Company of New York is worth more than $5,000,000 over and above all its debts and liabilities and such exemptions as may be allowed by law.

J. F. KERR.

Subscribed and sworn before me this 20th day of Dec., 1907.

[Seal] E. A. FARRELL,
Notary Public, New York County.
Certificate filed in Albany County.

FINANCIAL STATEMENT SEPTEMBER 30, 1907.

Resources:

Real Estate,	$3,148,837.64
Stocks and bonds, market value,	2,685,442.42
Cash in Banks and Offices,	661,180.08
Premiums in Course of Collection,	234,449.07
Accrued Interest and Rents,	24,863.08
	$6,754,772.29

(288)

Liabilities:

Capital Stock,	$2,500,000.00
Surplus,	2,503,740.18
Reserve for Re-Insurance,	1,126,652.37
Reserve for Contingent Claims,	559,896.03
Accounts payable not due,	64,483.71
	$6,754,772.29

Extract from the Record Book of the Board of Trustees of the American Surety Company of New York.

(289) The fiirst quarterly meeting of the Board of Trustees of the American Surety Company of New York, after the annual stockholders meeting was held at the office of the company.

No. 100 Broadway, New York City, on Wednesday, January 15, 1908, at 12 o'clock noon.

"The secretary read the report of the Nominating Committee as follows:

"To the Board of Trustees of the

American Surety Company of New York:

"Gentlemen:

"The Committee appointed by the Executive Committee of this company at their meeting held Wednesday, December 18, 1907, for the purpose of nominating officers of the company, for the ensuing year, beg leave to report as follows:

"We nominate for

Place.	Resident Vice-Pres.	Resident Assistant Sec.
Atlanta, Ga.	Chas. E. Currier, Edward C. Peters, Jos. T. Orme, M. M. Jackson.	Marion M. Jackson, A. J. Orme, W. G. Leas.

"Whereupon, it was

"Resolved, that the Secretary be authorized to cast one ballot of the Trustees present for the officers, members of the Executive Committee, Finance Committee, Committee on Accounts, Committee on Capital Box, and counsel, as recommended by the Nominating Committee for the ensuing year; which was done, and thereupon the aforementioned persons were declared to have been unanimously elected to their respective offices for the ensuing year.

* * * * * * * * *

"The following resolution was adopted:

"Resolved, that the Resident Vice-Presidents be and they hereby are, and each of them is hereby authorized and empowered to execute and to deliver and to attach the seal of the com-
(290) pany to any and all obligations for or on behalf of the company, such obligations, however, to be attested in every instance by the resident assistant secretary."

STATE OF NEW YORK,
County of New York.

I, F. J. Parry, Assistant Secretary of the American Surety Company of New York, do hereby certify that I have com-

pared the foregoing extracts and transcripts from the Record Book of the Board of Trustees of the American Surety Company of New York, with the original record of said board, and that the same are correct extracts and transcripts therefrom as they appear of record and are set forth and contained in said Record Book; and I further certify that I have compared the foregoing resolutions with the originals thereof, as recorded in the Minute Book of said Company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolutions, and that the said resolutions have not been revoked or rescinded.

Given under my hand and seal of the company at the City of New York, this January 30th, 1908.

[Seal] F. J. PARRY,
Assistant Secretary.

Bond of C. K. Henderson.

(291) Filed March 14th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT.

Wilson Distilling Company et al.
versus
W. J. Murray et al.
The Fleischmann Company
versus
W. J. Murray et al.
} In Equity. Consolidated Causes

BOND OF RECEIVER.

This undertaking made and entered into this 11th day of March, 1908, Witnesseth: that we, C. K. Henderson, as principal, and the United States Fidelity & Guaranty Company as surety do promise and undertake to and with the clerk of the Circuit Court of the United States, for the District of South Carolina, for the benefit for whom it may concern in the penal sum of $25,000, that the said C. K. Henderson will faithfully discharge the duties of receiver in the above entitled consolidated causes and will obey all the orders of the court therein.

In testimony whereof the said C. K. Henderson has hereunto set his hand and seal, and the said United States Fideli-

ty & Guaranty Company has caused these presents to be signed in its corporate name by H. J. Haynsworth and Wm. Goldsmith, Jr., its agents and attorneys in fact and its corporate seal to be hereunto affixed.

C. K. HENDERSON, [Seal]
THE UNITED STATES FIDELITY & GUARANTY CO. OF BALTIMORE, MD.,
By WM. GOLDSMITH, JR., and
H. J. HAYNSWORTH, Attorneys in fact.

Approved:

J. C. PRITCHARD,
U. S. Circuit Judge.

Undertaking on Injunction.

(292) Filed March 16th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

Wilson Distilling Company et al.
vs.
W. J. Murray et al.
The Fleischmann Company
vs.
W. J. Murray et al.
} In Equity.

Know all men by these presents, that we, Wilson Distilling Company, as principal, and American Bonding Company of Baltimore, as surety, undertake and become bound to W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton the defendants above named, in the sum of twenty-five hundred dollars ($2,500), lawful money of the United States of America, well and truly to be paid to them; to be void however, if the Wilson Distilling Company shall pay to the defendants above named such damages, not exceeding the sum above specified, as they may sustain by reason of the restraining order and injunction granted by His Honor, J. C. Pritchard, United States Circuit Judge, on the 7th day of March, 1908, if the court shall finally decide that the said plain-

tiff, Wilson Distilling Company was not entitled to said restraining order and injunction.

Dated March 7th, 1908.

WILSON DISTILLING COMPANY, [Seal]
By T. MOULTRIE MORDECAI,
Its Attorney and Solicitor.
AMERICAN BONDING COMPANY
OF BALTIMORE, [Seal]
By T. MOULTRIE MORDECAI,
Attorney in fact.

Witness:

C. J. MURPHY.

[Corporate Seal]

The foregoing bond is approved March 16th, 1908.

WM. H. BRAWLEY,
March 18, 1908. U. S. Judge.

Injunction Bond.

(293) Filed March 16th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT.

The Fleschmann Company, Complainants, *vs.* W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, constituting the State Dispensary Commission of South Carolina, and W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, individually, Defendants.	In Equity.

INJUNCTION BOND.

Know all men by these presents, that we, The Fleischmann Company, as principal, and The United States Fidelity &

Guaranty Company, of Baltimore, Maryland, as surety, are held and firmly bound unto W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, the defendants above named, in the sum of $7,500.00, to the payment of which, well and truly to be made, we bind ourselves and our successors firmly by these presents.

The condition of the foregoing obligation is such that, whereas the Fleischmann Company, a corporation, duly organized and existing under and by virtue of the laws of the State of Ohio, and a citizen of that State, has filed on the chancery side of the Circuit Court of the United States for the District of South Carolina, a bill against the said W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, and has obtained an allowance of an injunction, as prayed for in said bill, from said court.

Now, if the said The Fleischmann Company shall abide the decision of said court, and shall pay all moneys and costs which shall be adjudged against it, in case the said injunction (294) shall be dissolved, then these presents shall be null and void; otherwise, to remain in full force and effect.

In testimony whereof, the said The Fleischmann Company has caused these presents to be signed in its corporate name, by Chas. J. Christie, its Assistant Secretary, and its corporate seal to be hereunto affixed, and the said United States Fidelity and Guaranty Company has caused these presents to be signed in its corporate name by Philip R. Moale, its local agent and by Alf S. Barnard its agent and attorney in fact, and its corporate seal to be hereunto affixed, this the 11th day of March, 1908.

[Seal] THE FLEISCHMANN CO.,

By CHAS. J. CHRISTIE, Asst. Secretary.

THE UNITED STATES FIDELITY & GUARANTY CO.,

By PHILIP R. MOALE, Agt. & Atty. in fact.

THE UNITED STATES FIDELITY & GUARANTY CO., [Seal]

By ALF S. BARNARD, Agt. & Atty. in fact.

Order Authorizing Depositories to Honor Checks.

(295) Filed March 18, 1908.

THE UNITED STATES OF AMERICA, DISTRICT OF SOUTH CAROLINA, IN THE CIRCUIT COURT.

Wilson Distilling Company et al.
against
W. J. Murray et al.

The Fleischmann Company
against
W. J. Murray et al.

It appearing to the court: That the National Loan and Exchange Bank of Columbia for the convenience of the Creditors and at the request of the Commission advanced the *pro rata* of the several bank depositories of the Dispensary Fund to pay the several amounts ordered by the court to be paid by the said Commission by its Order of 5th March, 1908, amounting to the sum of one hundred and fifty-three thousand eight hundred and twenty-five and 43/100 ($153,825.43) dollars upon checks of the said Commission drawn on the said several Depository Banks for their *pro rata* share of said amount; and that before said checks could be presented to the said several Banks depositories this court by its order of March 7th, 1908, appointed Receivers of said fund not disturbed; and provision for the payment by the said several depositories of the said checks refunding the said The National Loan and Exchange Bank the money so advanced was inadvertently committed from said order; and the banks are in doubt as to their rights after said order of March 7th to honor said checks and refund their *pro rata* to the said The National Loan and Exchange Bank of Columbia:

It is therefore ordered by the court: On motion of Mr. Green for the said bank; that the several depository banks of the dispensary fund are hereby authorized to honor the checks of the Dispensary Commission in favor of the National Loan and Exchange of Columbia for the purpose and to the extent of reimbursing the said bank for the funds so advanced by it and that the order of this court of March 7th, 1908, appointing Receivers be modified accordingly.

Let a copy of this order be certified by the clerk to each of the several banks depositories of the Dispensary Fund.

J. C. PRITCHARD,
U. S. Circuit Judge.

March 17th, 1908.

Order Converting Bill Into an Intervention and Staying Further Proceedings.

(296) Filed 19th day of March, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT, AT CHARLESTON. IN EQUITY.

Garrett & Company
vs.
W. J. Murray et al.

On motion for counsel for plaintiffs in the above entitled cause, it is ordered by the court that the bill heretofore filed in this cause be converted into an intervention in the consolidated cause of Wilson Distilling Company et al. *v.* W. J. Murray et al., and the Fleischmann Company *v.* W. J. Murray et al., and that further proceedings herein be stayed except as an intervention in the said consolidated cause.

It is further ordered and adjudged that the plaintiffs have leave to amend their bill of complaint heretofore filed, in accordance with this order, and in such other respects as they may deem advisable.

This the 17th day of March, 1908.

J. C. PRITCHARD,
U. S. Circuit Judge.

Bill or Intervention of Garrett & Co.

IN THE CIRCUIT COURT OF THE UNITED STATES, IN AND FOR THE DISTRICT OF SOUTH CAROLINA. IN EQUITY.

(296-1)

Garrett & Company, Complainant,
vs.
W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, Defendants.

Bill of Complaint.

To the Honorable the Judges of the Circuit Court of the United States for the District of South Carolina:

Garrett and Company, a corporation, a citizen of the State of North Carolina, residing at Weldon in the Eastern District

of said State, brings this, its bill of complaint against W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, citizens and inhabitants of the State and District of South Carolina, the said W. J. Murray residing in the City of Columbia; the said B. F. Arthur in the City of Union; the said John McSween in the City of Timmonsville; the said C. K. Henderson in the City of Aiken and the said Avery Patton in the City of Greenville, in said State.

And therefore your orator complains and says:

1. That the Garrett & Company, complainant, is a corporation, duly chartered and organized under the laws of the State of North Carolina and is a citizen and resident of said State, with its principal place of business in Norfolk, Va.

2. That the defendants are citizens and residents of the State of South Carolina.

3. That the matter in controversy in this action exceeds in value the sum of two thousand dollars ($2,000.00), exclusive of interest and costs, as will hereinafter more fully appear.

(296-2) 4. That in January, 1907, the Legislature of the State of South Carolina enacted a statute abolishing the State Dispensary which has existed for some years and providing for the appointment of a Commission, to be composed of five persons, to wind up the affairs of the State Dispensary.

5. That the defendants, W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton were legally appointed members of the Commission, and duly accepted and qualified as such some time prior to March 17th, 1907, and have ever since composed the said Commission.

6. That the said statute provides that "It shall be the duty of said Commission to close out the entire business and property of the State Dispensary, except real estate, and including stock in the several County Dispensaries, by disposing of all goods and property connected therewith, and by paying of the proceeds therefrom all the just liabilities at the earliest date practicable.

7. That in December, 1906, your orator sold to the said State Dispensary of the State of South Carolina, through its directors who were the proper officers authorized by law to purchase wines and liquors for said Dispensary, the wines set out

in the statement hereto attached, marked Exhibit "A" and made a part of this bill at the prices shown in said statement. The total sale price of said wines being seven thousand five hundred and eighty-eight dollars and forty-four cents ($7,588.44).

8. That your orator shipped said goods to State Dispensary and the same were accepted by it through its duly authorized officers, and as your orator is informed and believes, were sold by said Dispensary at a large profit.

9. That no part of the price of said wines has ever been paid and the whole thereof was justly due to complainant by said State Dispensary at the time of the appointment of said Commission and still is justly due it. That said wines sold to the said Dispensary were reasonably worth seven thousand five (296-3) hundred and eighty-eight dollars and forty-four cents ($7,588.44).

10. That at the request of the defendants, your orator in April, 1907, sent to them an itemized statement of said indebtedness of the Dispensary to it and also a detailed statement of all the dealings of your orator with said dispensary from 1899 up to 1907.

11. That after a comparison of said statement with the books of the dispensary, the defendants claimed that there were errors in prior accounts of your orator, which has been settled and paid, that would reduce the amount due to the complainant to seven thousand four hundred and twenty-five dollars and ninety-seven cents ($7,425.97), all of which were alleged errors your orators consented to allow, and on April 18th, 1907, the defendants, through their chairman, W. J. Murray, wrote your orator as follows:

"I have credited your account with the invoices, copies of which you sent, and the only difference between our books now appears to be $9.00 and if you will adjust your claim in accordance with the statement mentioned, there will be an adjusted balance due you of $7,425.97. Kindly confirm—."

Your orator did confirm and agree to the said balance and alleges that it has a just claim against the said State Dispensary for said amount.

12. That upon information and belief, the defendants have closed out and disposed of all the stock and personal property of said dispensary, and collected all debts due it, and now have

on hand more than enough money from the proceeds thereof to pay in full all claims against said Dispensary, including that of your orator.

13. That your orator is advised and believes that it is the duty of the defendants to pay the said claim of your orator out of said moneys in their hands, in obedience to directions of said statute under which they were appointed, and that said duty is ministerial.

14. That your orator has demanded of defendants the payment of said claim out of said funds, but they have refused (296-4) and still refuse to pay the same, and have stated that they will not do so.

15. That upon information and belief, the defendants are now about to pay the claim of all other creditors of said Dispensary in full, and turn over the balance of the money that will remain in their hands into the State Treasury of South Carolina or into the School Fund of said State, so that they will have nothing out of which to pay your orators claim.

16. That unless they are restrained by a preliminary injunction, the defendants will so pay out and turn over all of said funds before this suit can be tried, and thus defeat any mandamus the court may issue therein.

17. That said Dispensary have been a State Institution, your honor cannot sue the same for said claims for that it would bebe a suit against the State of South Carolina; that your orator has no adequate remedy at law, and is therefore without remedy except in a court of equity, to procure a writ of mandamus to compel the defendants to perform the duties required of them by said statutes.

18. That the reason the defendants refuse to pay the claim of your orator, upon information and belief, is that they have arbitrarily determined to compel your orator to accept in payment of over six thousand dollars ($6,000.00) thereof, two car loads of old remnants of wines, which they have shipped to Norfolk, Va., after your orators told them that it would not accept or receive the same. The said defendants are seeking to make your orator take said wines at the prices for which they were originally sold.

19. That said lot of wines is composed of the accumulation of remnants left unsold during the last ten or twelve years from various lots of wines sold to said Dispensary by your orator, and represent the least desirable portion of the respective lots, which have been left on hand after the dispensary sold, at a large profit, the most desirable portions. That there is not among said remnants as much as ten per cent. of any one bill of wines.

20. That said lots of wines from which said remnants came were sold to said Dispensary at various times during the past (296-5) ten years and accepted by its proper officers, and all of them had been paid for and the contracts closed before the appointment of defendants to wind up the affairs of said dispensary, and more than ninety per cent. of each lot had been sold by said dispensary at a large profit, the parts so sold representing the most desirable parts of each lot.

21. That the various persons who were in charge of the dispensary at different times during said period were ignorant and inexperienced in the care and storage of wines and the wines bought by the dispensary were frequently, if not usually, negligently, improperly and badly stored and cared for, so that they would by reason thereof become injured and spoil, and your orator alleges, on information and belief, that most, if not all of said remnants of wines are wines which have become injured or spoiled by reason of such improper and bad storage, and that the same is of little or no value. The defendants, however, claim that the wine is in good condition.

22. That the defendants have admitted in conversation that their action in respect to the claim of your orator is not right, but assert that they have the power to do as they please because they cannot be sued for the reason that a suit against them would be a suit against the State; that your orator is helpless and can get nothing but what they give it, and that they are determined that they shall take said remnants for its debt or get nothing.

23. That the said action of the defendants is highhanded, grossly wrong, unfair and against conscience, and is in violation of your orator's contract rights and any alleged law of South Carolina, which they may claim attempts to give them the right or power so to act would be in conflict with the Constitution of the United States, in that it would violate the obligation of a contract, and therefore be unconstitutional and void.

To the end therefore, that your orator may have that relief which it can only obtain in a court of equity, and that the said defendants may answer the premises, but not upon oath or (296-6) affirmation, an answer under oath being hereby expressly waived by your orator, he now prays the court that a writ of mandamus be issued to defendants commanding them to pay the complainants said claim of $7,425.97 out of the said funds in their hands; that a preliminary injunction be issued, restraining them from paying over, or disposing of said funds until the final hearing herein; and that your orator may have such further or other relief in the premises as the nature of the circumstances of the case may require.

May it please your honors to grant to your orator a writ of subpœna to be directed to the said W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, thereby commanding them at a certain time and under a certain penalty therein to be limited, personally to appear before this Honorable Court and then and there, full, true, direct and perfect answer make to all and singular the premises, and to stand, perform and abide by such order, direction and decree as may be made against them in the premises as shall seem meet and agreeable to equity.

And your orator will ever pray.

(Signed) E. L. TRAVIS,
(Signed) W. E. DANIEL,
Solicitors for Complainant.

Paul Garrett, being sworn, says that he is President of Garrett & Company, the complainant herein; that the foregoing bill of complaint is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

(Signed) PAUL GARRETT.

Sworn to and subscribed before me October 9, 1907.

(Signed) CHAS. D. WILDES,
Notary Public, Wake County, N. C.

Exhibit "A."

(296-7) Norfolk, Va., April 17, 1907.

South Carolina State Dispensary,
Columbia, S. C.

To Garrett & Company, Dr.

1916.

12— 3	To Invoice.				
	100 Cs. Sherry	5s	4.25	425.00	
	50 " "	9s	5.10	255.00	
	100 " Port	5s	4.25	425.00	
	50 " "	59s	5.00	250.00	
	100 " Escapernong	5s	4.35	435.00	
	50 " Red Va. Dare	9s	5.00	255.00	
	50 " " "	5s	4.35	217.50	
	50 " Blackberry	5s	4.00	200.00	
	50 " "	9s	4.75	237.50	2,700.00
12—20	To Invoice.				
	1287 ½ gals. Port 00.67½			869.06	
	50 bbls. 51½-52-51-52-51/53-52-48				
	51-51 52-51-51-52-51-52-52-53-52-52				
	-51-52-51-52-51-				
	1269 gals. Sherry Cooking 62½,				
	809.38,			809.38	1,678.44
	51-53-50-52-52-53-52-51-51-52-				
	52-51-52-52-52-52-53-51-53-52-				
	52-51-51-51-53.				
12—22	To Invoice.				
	100 Cs. Sherry	5s	4.35	425.00	
	50 " "	9s	5.10	255.00	
	100 " Port	5s	4.25	425.00	
	50 " "	9s	5.00	250.00	
	100 " Escapernong	5s	4.35	435.00	
	100 " "	9s	5.10	510.00	
	50 " Red Va. Dare	9s	5.10	255.00	
	50 " " " "	5s	4.35	217.50	
	50 " Blackberry	5s	4.00	200.00	
	50 " "	9s	4.75	237.50	3,310.00
	Total				7,588.44

Personally appeared before me C. B. Cole, Secy. & Treas. of Garrett & Company, Inc., who certified that the foregoing and attached statement of account against the South Carolina State Dispensary is true and correct, no part thereof having been paid to the best of his knowledge and belief.

(Signed) GARRETT & COMPANY,
C. B. COLE, Sec. & Treas.

Sworn to and subscribed before me this 17th day of April, 1907.

J. M. JORDAN, JR.
My term of office expires January 7, 1908.

A true copy—Attest:

C. J. MURPHY,
C. C. C. U. S., Dis. S. C.

Answer and Return.

(296-8) Filed November 26th, 1907.

IN THE UNITED STATES CIRCUIT COURT, IN AND FOR THE DISTRICT OF SOUTH CAROLINA. IN EQUITY.

Garrett & Company, Complainants,
vs.
W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, Defendants.

The answer and return of the defendants to the complaint and rule served upon them in the above cause to show cause why a peremptory mandamus should not issue commanding them to pay the claim of the plaintiff respectfully shows:

1. That they have no information upon which to form a belief as to the allegations of the first paragraph and, therefore, deny the same.

2. They admit the allegations of the second paragraph.

3. They admit that the plaintiff claims more than $2,000 to be due him from the State of South Carolina as alleged in the third paragraph of the complaint.

4. They admit that the Legislature of South Carolina passed an act which was approved the 16th day of February, 1907, abolishing the State Dispensary, the same being found at page 963 of the 25 Statutes at Large for South Carolina, and they further admit that the Legislature passed an act approved on the 16th day of February, 1907, providing for the appointment of a commission to wind up the affairs of the State Dispensary, which act is found on page 835 of 25 Statutes at Large in South Carolina, and they allege that the act creating such commission conferred upon them all the powers enumerated in the act of the Legislature of South Carolina approved January 24th, (296-9) 1906, and found at page 334 of 25th Statutes at Large for South Carolina, reference to all of which acts is hereby craved and the same, or so much thereof as is pertinent, are parts of this answer and return.

5. They admit that they are and were at the beginning of this suit the members of the said Commission and in discharge of their duties.

6. They admit the allegations of the sixth paragraph of the complaint.

7. That they have not sufficient information on which to form a belief as to the correctness of the allegations of the seventh paragraph and, therefore, deny the same and demand strict proof of the same.

8. That they have not sufficient information upon which to form a belief as to eighth paragraph, and they, therefore, deny the same and demand strict proof thereof.

9. That they deny the allegations of the ninth paragraph of the said complaint.

10 & 11. That as to the tenth and eleventh paragraphs of the said complaint, they allege and say that under the authority and direction of the act creating said Commission, they employed the American Audit Company, a company engaged in the business as public accountants, to make a full and correct adjustment of all of the book entries in the books of the said State Dispensary, and that the said Accountants took up the said work and corresponded in the name of W. J. Murray, the Chairman of the Commission, with the plaintiff as well as with all other creditors, with a view to correcting and properly setting forth the proper book entries that should be made, without authority, however, to bind this Commission or the State of South

Carolina as to the merits of any claim except as to the proper entries to be made, and without any authority to promise payment of any claim, and that the correspondence set forth in the eleventh paragraph was had by said Audit Company, merely looking to the correctness of the books entries, and they are informed and believe that the conclusion reached was correct, (296-10) but whether the conclusion set forth in this petition is the conclusion reached as to the correctness of the entries made in the books, this Commission has not sufficient information upon which to base an affirmation or denial.

12. They deny the allegations of paragraph twelve of the complaint.

13. They deny the allegations of the thirteenth paragraph thereof.

14. They deny the allegations of the fourteenth paragraph and allege that so far from having demanded payment of these defendants, the plaintiff has submitted prospositions offering a discount if the defendants will pay the account and retain all wines that were on hand, which proceeding has not been accepted by this Commission as yet.

15. They deny the allegations in paragraph fifteen of the complaint, and allege that on the very date upon which this bill was presented and the restraining order herein granted they resolved to postpone the payment of any claim against the said Dispensary indefinitely pending certain developments that had come to the knowledge of these defendants, and also pending the final report of the American Audit Company which had not been received.

16. The defendants deny that they are about to pay out or turn over all or any of said funds before this suit can be tried, and deny especially that they are attempting or intend to attempt, to escape any proper liability of the State.

17. They admit the allegations of the seventeenth paragraph of the complaint, except that they deny any inference that this court of equity has the right to issue a mandamus to compel these defendants to discharge their duty, or that a mandamus can be issued by a court of equity of the United States in the Circuit Court in this proceeding.

18. They deny that they have arbitrarily determined to compel your orator to accept in payment a large amount of

(296-11) wines, but, on the other hand, they allege that under the act of the Legislature creating this Commission, they were directed and authorized to return any wines or liquors which were illegally purchased to any of the parties who had sold the same. And they further allege that the plaintiff in his dealings with the State Board of Directors had failed to comply with the law in the form of his bid and in furnishing a chemical analysis of the goods which he sought to furnish, and in nearly every instance in furnishing any bond to carry out in good faith and according to the bid the contract made, and they deny that he complied in any respect with the law regulating sales to the State Dispensary, and allege on information and belief that he sold his goods to the Dispensary at more than the market price, and that this was done continually and by collusion with the State Board of Directors as they are informed and believe, and that in addition to that there was an agreement made by the said plaintiff that any wines that were unsalable could be returned to him, which is shown in Exhibit A., and this Commission, therefore, acting both upon such agreement and upon the law creating the Commission, have returned a large amount of wines to the said plaintiff, and they deny that on the proper investigation of the account and proper scaling of the prices which were excessively large on account of the fact that the bids and advertisements were so arranged that competition *and* was excluded in violation of the Statutes regulating purchases by the State Board that nothing is due the plaintiff upon his account, and they further allege that no bid was filed upon which the alleged sale in December was made and that it was totally illegal and that many sales were made direct to County Dispensers, without being sold properly to the State Board in utter disregard of the law, reference being here craved to the dispensary law regulating sales.

19. That as to paragraph nineteen they allege that all that they know of the character of the wines as at present advised, which were returned, is that they were on hand and unsold and in that condition they came under the terms of the contract which authorized the return of unsalable wines and also under (296-12) the terms of the Statute authorizing them to return wines illegally bought, and they are informed that many of them were returned by County Dispensaries to whom they had been sold direct, illegally under contract to be returned if unsaleable.

20. They deny the allegations of paragraph 20 on information and belief, and allege that there was a continuous open account running for many years between the plaintiff and the

State Dispensary and that at no time has that account been *entire* liquidated.

21. They deny, on information and belief, the allegations of the twenty-first paragraph.

22. They deny the allegations of the twenty-second paragraph of the complaint.

23. They deny the allegations of the twenty-third paragraph of the complaint.

24. They deny that this court has any jurisdiction of the subject matter in that (a) this court has no jurisdiction to entertain an original proceeding for the issuance of a mandamus, and (b) in that upon the face of the bill this is a proceeding against the State, it being in effect an action to enforce specific performance of a contract alleged to have been made by the State with this plaintiff.

25. They deny further that this court, if it had jurisdiction of the subject matter, can under the well settled principle of law, proceed by mandamus to require this Commission to pay the account as prayed on the ground (1) that the account is not an adjudicated account, and (2) that this Commission, under the Statutes creating it, is clothed with the power of court and its action is discretionary, it being given the authority to hear and determine all questions as to the validity of accounts and to withhold the payment of the same and to scale the same if, in their judgment, they are unjust, and its action being entirely discretionary this court has no authority to require it to proceed in any other manner than that in which the Statutes give it authority to proceed, and it is so proceeding and the resolution hereto attached and marked Exhibit E. shows the same.

(296-13) 26. They further deny that there is enough money in the hands of the Commission with which to pay the claims against the State, and they deny that their discretion as to the time in which to pay the claims can be interfered with by mandamus.

27. They allege that they are informed and believe that the plaintiff and the State Board of Directors were guilty of gross irregularities and gross overcharges against the State and so conducted the purchase that such overcharges and irregularities invalidated and rendered illegal the contracts that the plaintiff made with the State Board of Directors, and, therefore,

they are proceeding as a court to fully investigate all of the transactions, and if upon full investigation they decide that there is anything due the plaintiff, it will be promptly paid, but that their action in this matter cannot be controlled by this court by any mandamus proceeding.

28. They allege that heretofore and a long time before the filing of this bill, the plaintiff had instituted its action against this Commission in the court of law and chancery for the City of Norfolk, in the State of Virginia, and had served its writ upon the defendant C. K. Henderson, in which suit has been brought for this same claim against this Commission in that court, and a copy of the writ is hereto attached marked Exhibit C. and a copy of the bill is hereto attached marked Exhibit D. in said proceeding, and they deny the right of this plaintiff to prosecute two actions in two jurisdictions on the same cause of action.

Wherefore they pray that this Rule and proceeding be dismissed.

J. FRASER LYON, Atty.-Gen.
STEVENSON & MATHESON,
Defendants Attorneys.

SOUTH CAROLINA, }
Richland County. }

Personally comes W. J. Murray who on oath says that the foregoing return and answer is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

W. J. MURRAY.

(296-14) Sworn to before me Nov. 12, 1907.

[L. S.] JOHN E. HOLMS,
Not. Pub. S. C.

Exhibit A. 1.

Hon. H. H. Crum,
Columbia, S. C.

Dear Sir:

(296-15) We are constantly getting inquiries from private parties in S. C. for wines, We send a price list in these in-

stances higher than the prices of the Dispensary, and write them about as follows, in order to induce the business to go to the Dispensary. The difficulty is that the dispensers will not keep a good stock. I would like to have the privilege of writing a personal letter to each dispenser pointing out the necessity of keeping a good stock on hand, Of course, I shall not write them unless I have your permission, or the permission of the Board. Let me know at once what is the best thing to be done in these cases.

We are finishing up your order to day, and will be very glad to have your requisition for what goods you will need during Nov. so that we can be putting them up at every favorable opportunity.

Yours truly,

PAUL GARRETT.

Weldon, N. C., Oct. 28th, 1902.

G. T.

See copy attached.

A. 2.

(296-16) October 28th, 1902.

Mr. T. S. Richbourg,
Dillon, S. C.

Dear Sir:

Replying to your kind inquiry of the 27th, we herewith hand you price list of our wines, but beg to suggest that the dispensary should have a full assortment of our standard wines in stock, which by special arrangements with the Dispensary will be furnished you there, just as cheap as we could ship them from here, and every bottle bearing our label is guaranteed satisfactory or the money will be refunded you by the Dispensary, However, should you be unable to get what wines you want at the Dispensary, it will afford us pleasure to supply you direct.

Awaiting your reply, we are,

Yours very truly,

G. T.

A. 3.

Weldon, N. C., Nov. 28, 1902.

Hon. Board of Directors of S. C. Dispensary,
Columbia, S. C.

It is again our pleasure to submit bids for your stock of wines for next quarter. Samples have been sent to the State Treasurer by express as directed, one copy of this bid going in the box of samples and the other copy mailed direct to the Treasurer.

Notwithstanding a rumor of a combination of the Glass men, which advances the cost of bottles, our contracts up to this time are holding good, and we are able to renew the quotations heretofore made.

It is useless to bore you with a repetition of what we have (296-17) often laid before you. The extension of the work in your State, is limited only by our ability to get the local dispensers to carry a good stock at all times.

No cases of dissatisfaction with the wine have been reported to us that we have not immediately adjusted, and from the numerous inquiries we are getting from all over the State, we are confident that our goods are giving universal satisfaction.

We appreciate very highly the confidence which has been shown us in the past, and which has been reposed in our goods and methods, and we beg to express the hope that a sufficiently large order will be placed in this purchase (as in the last) and sufficient time given us to enable us to get the goods up without any rush, and to keep a good supply at all the local dispensaries, With kindest regards to each and all and hoping to have the pleasure of a long continuance of the pleasant relations which have existed between us in the past, we beg to remain,

Yours very truly,

GARRETT & CO.

G. T.

A. 4.

Weldon, N. C., Nov. 28th, 1902.

Garrett & Co's bid for wines, etc., for S. C. Dispensary.

Here is the price list.

All bulk goods as per proposition made in Sept. any other wines not, enumerated, we will undertake to supply at corre-

spondingly low figures, in either glass or bulk, as per previous proposition.

The same guarantee applies to all goods, namely, of satisfaction to the consumer or the money may be refunded and charged to us.

Thanking you for the courtesy which has always characterized all of our relations with us, and hoping to merit by constantly improved goods and service, the continuance, we beg to remain,

Yours very truly,

GARRETT & CO.

A. 5.

(296-18) Weldon, N. C., May 28th, 1903.

To the Hon. Board of Control,
Columbia, S. C.

Now if ever a bottle of our wines has been unsatisfactory, and not made good by the firm, it is because the matter has not been brought to our attention. The question is, which pays better, to pay a reasonable price for goods, and make a sure profit, and build up the wine business, to the betterment of morals, and the profit of the Dispensary, or to buy cheap wines, and get the trade in the condition it was five years ago? It is true that we are charging the same for wines as when the stamp tax was on, but the cost of other things has more than offset this cost. All supplies have advanced steadily from 10 to 25% so that we are really making less profit on the Dispensary business now than we did while the stamp tax was on. If your Board will kindly give the writer permission to appear before it, we can make it very plain to you that it is injudicious to get into handling the cheap trashy wines which will bring discredit on the Purchasing Board from a class of people who drink wines, and they are the influential class. Remember the guarantee we give is that we don't want pay for a single bottle of wine that the consumer is not pleased with. This covers the whole case. On the other hand, we take all the risks, abide by the experiences of that time, and we are content to abide by the result. Look at the figures: In 1901 the Dispensary bought of us about $20,000.00 worth of wines, which it sold at an average profit of 40%, making a net profit of $8,000.00 without the risk of a dollar. In 1902, the sales were about the same, just a little less in the latter part of the year, and making the same ratio of profits. Now how do these figures contrast with an

actual loss, while the Dispensary was buying wines of a cheap class, and having the spoil on their hands, with great loss and annoyance?

GARRETT & CO.,
Per PAUL GARRETT.

A. 6.

(296-19) Norfolk, Va., 8, 22, 1904.

Mr. G. H. Charles,
Columbia, S. C.

Dear Sir:

We are just in receipt of letter from Mr. Clark enclosing orders for direct shipment and we beg to ask you to kindly have mailed to us at once a good supply of shipping certifications for these goods.

Thanking you in advance and hoping you will call on us whenever we can serve you, we beg to remain,

Yours very truly,

GARRETT & CO.

C. B. B.

A. 7.

STATE OF SOUTH CAROLINA,
County of Bamberg.

Personally appeared before me E. L. Price, who being duly sworn, says, that he was Dispenser at Bamberg, S. C., from about Nov., 1901, to Feby. 16th, 1907; that during that time Messrs. Garrett & Co., or their agent and representative Mr. Clark, on one occasion did ship one case quarts Domestic wine replacing an even number of quarts that had become leaky and unsalable, requesting him at the same time to destroy these goods when replaced.

E. L. PRICE.

Sworn to before me this the 15th day of November, 1907.

G. A. JENNINGS, [L.S.]
Notary Public, S. C.

A. 8.

STATE OF SOUTH CAROLINA,
County of Bamberg.

(296-20) Personally appeared W. O. Tatum, who being duly sworn, deposes and says that he was Commissioner of the S. C. Dispensary from March 1st, 1904, to Feby. 16th, 1907, and that during that period he on divers occasions was told by Mr. Clark, representing Garrett & Co., that Garrett & Co., would receive back and replace with fresh goods all wines not in good condition, either from mutilated labels, leaky bottles, shop-worn or anything which impaired their appearance or sale. Further that he was informed by Mr. Clark, that his house, Garrett & Co., had such a contract or understanding with the State Board of Directors, either in writing or oral, deponent does not know. Further that such an exchange was made from the State Dispensary during his administration.

W. O. TATUM.

Sworn to before me this 15th day of November, 1907.

[L. S.] E. L. PRICE,
Notary Public.

A. 9.

STATE OF SOUTH CAROLINA,
County of

Personally comes John Bell Towell, who on oath says that he occupied the position as one of the members of the State Board of Directors of the State Dispensary of South Carolina, and that he was familiar with the purchases of wines and brandies made from Garrett & Company, and deponent further says, during his period of two years as a member of said Board of Directors, said Board, had absolute control of all purchases made for the South Carolina Dispensary, and the understanding with said Garrett and Co. for all wines purchased from them was guaranteed, and at any time, any wines found unsalable or spoilt either in the State Dispensary or in the County Dispensaries, was to be returned to said Garrett & Company under said guarantee, they allowed their representative Mr. Clark,

to visit County Dispensaries to get orders and ship direct, said (296-21) orders coming through the office of the State Board of Directors.

JOHN BELL TOWELL.

Sworn to before me this 15 day of November, 1907.

BARRETT JONES,
Notary Public for South Carolina.

A. 10.

STATE OF SOUTH CAROLINA,
County of Richland.

Personally comes Thomas W. Collina, who on oath says that he was connected with the State Dispensary for some years, and deponent further says that he was personally acquainted with Mr. Clarke, a representative of Garrett & Company, and that he has often told him that all wines, etc., bought of Garrett & Company was guaranteed, and any unsalable goods would at all times be taken back and exchanged for fresh and salable goods, and that the State had nothing to lose in the purchase of goods from Garrett & Company.

THOMAS W. COLLINA.

Sworn to before me this 14th Nov., 1907.

[L. S.]

L. T. LEVIN, JR.,
Notary Public S. C.

A. 11.

STATE OF SOUTH CAROLINA,
County of Richland.

Personally comes M. M. Mobley, who on oath says that he occupied the position of book-keeper at the State Dispensary in South Carolina for quite a while, and on several occasions he has heard Mr. Clark who was representative of Garrett & Company, say that his firm would take back all unsalable wines sold to the South Carolina State Dispensary by said Garrett & Company.

M. H. MOBLEY.

Sworn to before me this 14th day of November, 1907.

[L. S.]

THOS. W. COLLINS.
Notary Public for S. C.

A. 12.

SOUTH CAROLINA,
County of Richland.

(296-22) Personally comes J. L. Thorpe, who on oath says that he was connected with the Dispensary at Aiken, South Carolina, for some years, and that Garrett & Company had a travelling man by the name of Clark who came and solicited orders from the said Dispensary, and told said Dispenser that he was taking orders for Garrett & Company from the Dispensaries in the State and having the goods shipped directly to the Dispensaries instead of through the State Dispensary.

Deponent further says that the said agent agreed that any unsalable stock should be returned and that the odds and ends which were returned to the State Dispensary as unsalable came largely from the said Garrett & Company in that way, and that all said purchases were made with the distinct understanding that all unsalable goods should be returned and charged to Garrett & Company.

J. L. THORPE.

Sworn to before me this 11th day of November, 1907.

THOMAS W. COLLINS,
[L. S.] Notary Public S. C.

A. 13.

SOUTH CAROLINA,
County of Aiken.

Personally comes G. T. Holley, who on oath says that he was connected with the Dispensary at Aiken, South Carolina, for some years, and that Garrett & Company had a travelling man, by the name of Clark who came and solicited orders from the said Dispensary, and told said Dispenser that he was taking orders for Garrett & Company from the dispensaries in the State and having the goods shipped directly to the Dispensaries instead of through the State Dispensary. Deponent further says that the said agent agreed that any unsalable stock should be returned and that the odds and ends which were returned (296-23) from Aiken to the State Dispensary as unsalable came largely from the said Garrett & Company in that way, and that all said purchases were made with the distinct un-

derstanding that all unsalable goods should be returned and charged to Garrett & Company.

G. T. HOLLEY.

Sworn to before me this 5th day of November, 1907.

C. K. HENDERSON,
Not. Pub.

Ex. B. 1.

RESOLUTION OF COMMISSION.

Constituting a court of investigation and acting under authority of the power conferred upon us by the act of the legislature of South Carolina, approved 16th of February, 1907, which gives us the right as a winding up commission, to withhold payment of any amounts due any parties by the State Dispensary until such parties have placed themselves with all books and papers within the jurisdiction of this commission for examination under oath, and such examination of the books and papers as the commission deem proper, these books must include the books of original entry, journal, cash book, ledger, etc., covering all the transactions with the State Dispensary as well as all other parties, and covering such dates as the commission may require, you are hereby notified to appear with your books and papers. Pending this action your claim is held up. Should you have any good reason why this action should not be required of you, you may submit it and if your reason is in the judgment of the commission a good one we will arrange a date with you when you can be heard.

Ex. C. 1.

Commonwealth of Virginia to the Sergeant of the City of Norfolk—Greeting:

We command you that you summon W. J. Murray, John McSween, C. K. Henderson, B. F. Arthur and Avery Patton, to appear in the Clerk's office of our Court of Law and (296-24) Chancery of the City of Norfolk, at the rules day to be holden for the said court, on the first Monday in October, 1907, to answer Garrett & Co., a corporation, of a plea of tres-

pass on the case in assumpsit. Damages $10,000.00.

And have then and there this writ.

Witness, James V. Trehy, Clerk of our said Court at his office this 15th day of September, 1907, in the 132nd year of our foundation.

Teste:

JAMES W. TREHY, Clerk.
By JUNIUS A. COLEMAN, D. C.

Ex. D. 1.

In the Court of Law and Chancery of the City of Norfolk filed 2 Oct. Rules, 1907.

Garrett & Co., a corporation, Plaintiff,
vs.
W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson, and Avery Patton, Defendants.
} In Assumpsit.

Garrett & Co., a corporation duly organized and existing under the laws of the State of North Carolina, plaintiff in this case, complain of W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson, and Avery Patton, defendants, in this case of a plea of trespass on the case in assumpsit for this, to-wit: that heretofore, to-wit, prior to and during the month of December, 1906, the State Dispensary of the State of South Carolina was a body organized and existing under the laws of the State of South Carolina, through which and whereby the said State of South Carolina, bought wines and spirituous liquors, and sold and dispensed the same throughout the said State of South Carolina; that under and by virtue of the laws of the said State of South Carolina, said State Dispensary was authorized and empowered to purchase wines and spirituous liquors and to pay for and to sell the same in the usual course of trade, the said State Dispensary being constituted by said laws of South Carolina an agency of the State of South Carolina for the purchase and sale of wines and spirituous liquors (296-25) and the said plaintiff avers that in the month of December, 1906, the said Garrett & Company at the special instance and request of the said State Dispensary, sold and delivered to the said State Dispensary certain wines and other spirituous liquors, for which said wines and other spirituous liquors the said State Dispensary promised and agreed to pay to the said Garrett & Company the sum of $7,588.44 whenever the said State Dispensary should thereafter be requested. And

the said plaintiff avers that the said goods so sold and delivered as aforesaid were duly accepted by the said State Dispensary, which has since sold all of said goods to purchasers thereof, and has received payment for the same and in such sale or sales has made large profits. And the said plaintiff further avers that afterwards, to-wit: during the month of January, 1907, by an Act of the Legislature of the State of South Carolina, the said State Dispensary was abolished and its powers revoked and annulled and provision was made for the appointment by the Governor of the said State of South Carolina of a Commission of five persons to be known as the "State Dispensary Commission," which said Commission was empowered and directed to sell all the stock and personal property of said Dispensary, and out of the proceeds thereof to pay all debts and just liabilities of the aforesaid State Dispensary. That subsequently, to-wit: in pursuance of said authority, the Governor of the State of South Carolina appointed as the members of said State Dispensary Commission the said defendants, the said W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, who subsequently duly qualified as the members of said Commission and entered upon the discharge of their duties. And the said plaintiff avers that by virtue of the said law of the said State of South Carolina the said defendants have disposed of the stock and personal property of said dispensary, and had and now have in hand from the proceeds thereof ample money sufficient to pay the said sum of money due to the plaintiff as hereinbefore mentioned and which by law they are directed to do and all other debts and liabilities (296-26) of said State Dispensary. And the said plaintiff avers that the said defendants, being by the laws aforesaid required and directed to pay the debts of said State Dispensary out of said funds, and having in hand sufficient thereof to pay the same, it became and was and is the duty of said defendants under said statute to pay the said plaintiff the said sum of money above demanded, and it being their duty so do *to* the said defendants, afterwards, to-wit: on the 18th day of April, 1907, promised the said plaintiff to pay it the said sum of money above mentioned. Yet the said defendants, although often requested have arbitrarily and in conscious disregard of their said duty, failed and refused to pay the said sum of money above demanded or any part thereof and the said plaintiff avers that such refusal of the said defendants to pay the said plaintiff as aforesaid, they have arbitrarily, wilfully and knowingly disregarded and violated the duty imposed upon them by the said laws of the State of South Carolina, in consequence of which said wilful, intentional and illegal disregard and violation of their duty in the premises, the said defendants, hav-

ing so unlawfully, wrongfully and arbitrarily deprived the plaintiff of the payment of its said claim from the said funds in the hands of said defendants intended for the payment of the same, and the said plaintiff being without the power to sue the said State of South Carolina for said goods sold and delivered as aforesaid, the said defendants have become and are liable to the said plaintiff for the said sum of money above mentioned. And being so liable, the said defendants, on the day and year last aforesaid, promised to pay the said plaintiff the said sum of money above demanded whenever the said defendants should be thereafter requested and although having been often so requested, the said defendants have hitherto wholly neglected and refused to pay to the said plaintiff the said sum of money hereinabove mentioned to the damage of the said plaintiff, $10,000.00.

2nd Count. And for this to-wit: that heretofore, to-wit: on the 18th day of April, 1907, the said defendants were indebted to the said plaintiff in the sum of $7,588.44 for the price (296-27) and value of goods before that time sold and delivered by the plaintiff to the defendants at their special instance and request; and also in the sum of $7,588.44 for the price and value of work before that time done by the plaintiff for the defendants at their special instance and request; and also in the sum of $7,588.44 for money before that time had and received by the defendants to the use of the said plaintiff, and being so indebted the said defendants in consideration thereof, afterwards, to-wit: on the day and year last aforesaid undertook, and faithfully promised the said plaintiff and to pay it the said several sums of money in this count mentioned when the said defendants should be thereun*der* afterwards requested.

Third Count. And for this also, that heretofore, to-wit: on the day and year last aforesaid, the defendants accounted with the said plaintiff of and concerning divers other sums of money before that time due owing to the said plaintiff, and then in arrears and unpaid; and upon such accounting, the said defendants were found in arrear and indebted to the said plaintiff in the further sum of $7,588.44 and being so found in errear and indebted, the said defendants in consideration thereof undertook and then faithfully promised the said plaintiff to pay it the said sum of money in this last count mentioned when they the said defendants should be thereunto afterwards requested.

Yet the said defendants not regarding their said several promises and undertakings have not yet paid to the said plain-

tiff, the said several sums of money or any or either of them or any part thereof, although often requested so to do, but to pay the same have hitherto wholly neglected and refused and still doth neglect and refuse to the damage of the said plaintiff of $10,000.00 and therefore it institutes this action of trespass on the case in assumpsit.

LOYAL, TAYLOR & WHITE, p. q.

A Copy Teste:

JAMES V. TREHY, Clerk.
By JUNIUS A. COLEMAN, D. C.

Notice of Motion to Vacate Injunction and Receivership Orders.

(297) Filed March 27th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT.

Wilson Distilling Company et al.
vs.
W. J. Murray and others,
and
The Fleischmann Company,
vs.
W. J. Murray and others.
} In Equity.

To Messrs. T. Moultrie Mordecai, Frank Carter, H. C. Chedester, Merrick and Barnard, and George B. Lester, Solicitors for all the complainants.

You will please take notice that the undersigned attorneys for the State Dispensary Commission will move before his Honor, J. C. Pritchard, Circuit Judge, at Asheville, N. C., at his chambers, at ten o'clock in the forenoon on March 27th, 1908, or as soon thereafter as counsel can be heard, for an order revoking the former orders of the said court, granting an injunction and appointing receivers, on the ground that the Supreme Court of South Carolina has now construed the Statutes of South Carolina and the Constitution of the said State, under which the complainants claim their rights, and has construed it differently from the said Circuit Courts construction which construction if followed, ousts the jurisdiction of the Circuit Court.

The motion will be made upon the pleadings and returns and affidavits already before the court, and on the decision of (298) the Supreme Court of the State of South Carolina, and the record upon which it is based in the case of the State of South Carolina ex rel. J. Fraser Lyon *vs.* W. J. Murray and others, a formal petition being presented setting up the said facts.

J. FRASER LYON, Attorney General.
STEVENSON & MATTHESSON,
ABNEY & MULLER,
ANDERSON, FELDER, ROUNDTREE & WILSON,
Defendants Attorneys.

March 19th, 1908.

SOUTH CAROLINA, }
Chesterfield County. }

Personally comes W. F. Stevenson who on oath says that he mailed copies of the within notice to T. Moultrie Mordecai and Merrick and Barnard at their respective residences and prepaid the postage thereon, said letters being mailed from Columbia, S. C., on the 19th day of March, 1908.

W. F. STEVENSON.

Sworn to before me March 20th, 1908.

[Seal] U. R. BROOKS,
Clerk Supreme Court of South Carolina.

Petition for Mandamus.

(299) Filed March 27th, 1908.

THE STATE OF SOUTH CAROLINA, IN THE SUPREME COURT, ORIGINAL JURISDICTION.

The State of South Carolina, ex rel. J. Fraser Lyon, as Attorney-General, Petitioner,
against
W. J. Murray, John McSween, C. K. Henderson, Avery Patton, and B. F. Arthur as State Dispensary Commission, Respondents.

PETITION FOR MANDAMUS.

To the Honorable Y. J. Pope, Chief Justice of the Supreme Court of the State of South Carolina:

Your petitioner respectfully shows to this honorable court:

1.

That the respondents, W. J. Murray, John McSween, C. K. Henderson, Avery Patton and B. F. Arthur, compose the State Dispensary Commission and are officers and agents of the State of South Carolina, appointed by the Governor under the terms of an Act to provide for the disposition of all property connected with the State Dispensary and to wind up its affairs, approved the 16th day of February, A. D., 1907; that the said respondents have each given bond for the faithful performance of the duties required, in the sum of ten thousand dollars, and have heretofore entered upon and are now holding the said office of State Dispensary Commission.

2.

That under the terms and provisions of the Act hereinbefore referred to, the said State Dispensary Commission has collected assets of the State Dispensary amounting to several hundred thousand dollars in money, and they have the same now on deposit and subject to their check, in various banks in the (300) State of South Carolina, all of which money, property and assets arising from the business of the State Dispensary is the property of the State of South Carolina.

3.

That by an Act of the General Assembly, approved the 24th day of February, 1908, which Act is now of force, the sum of $15,000 was appropriated for the use of the Attorney-General's office, and the State Dispensary Commission was required to pay the same into the State Treasury out of any funds in its hands arising from the business or property of the State Dispensary; that the said Act further provides that the said sum shall be paid out by the State Treasurer upon the warrant of the Comptroller-General, and accounted for in the same manner as other funds appropriated for the use of the Attorney General's office.

4.

That Hon. R. H. Jennings, Treasurer of the State of South Carolina, has made demand upon the respondents that the said sum of money shall be turned into the State Treasury as provided for in the said Act approved 24th day of February, 1908, and the respondents have failed and refused to comply with the provisions of said Act of the Legislature and to turn into the State Treasury the said sum of $15,000, which amount they now have in their charge and custody as the property of the State and subject to the order of the Legislature.

5.

That the sum of $15,000 was appropriated for the use of the Attorney-General's office to meet expenses of any criminal prosecutions that have been or may be commenced against any person or persons charged with violation of the law in any manner connected with the late institution called the State Dispensary, and is to be used solely for governmental and public purposes.

6.

(301) That although the act required to be done by the respondents is purely a ministerial duty, they have, nevertheless, unjustly refused to perform the same as required by law.

Wherefore your petitioner prays that an order to issue authorizing and requiring the respondents to turn the sum of $15,000 into the Treasury of the State of South Carolina, in accordance with the terms of the Act appropriating the same,

approved 24th day of February, 1908; and for such other and further relief as may be just and proper in the premises.

J. FRASER LYON,
Attorney-General.

[Verified]

Rule to Show Cause.

IN THE SUPREME COURT.

(302)

Original Jurisdiction.

The State of South Carolina, *ex relatione* J. Fraser Lyon, as Attorney-General, Petitioner,
against
W. J. Murray, John McSween, C. K. Henderson, Avery Patton, and B. F. Arthur, Respondents.

The State of South Carolina to W. J. Murray, John McSween, C. K. Henderson, Avery Patton and B. F. Arthur as State Dispensary Commission:

Whereas, an Act of the Legislature was approved on the 24th day of February, 1908, authorizing and requiring you as State Dispensary Commission to pay into the State Treasury the sum of fifteen thousand dollars, out of any funds in your hands arising from the business or property of the State Dispensary, and, nevertheless, you have unjustly refused to turn the same into the State Treasury as required by said Act to the injury of the State of South Carolina, as appears to us by the complaint in the above stated case;

Now, therefore, we, being willing that speedy justice be done in this behalf, do command and enjoin you, and each of you, that immediately after the receipt of this order, you show cause before the Supreme Court at Columbia, S. C., on the 4th day of March, 1908, at ten o'clock in the forenoon, why a mandamus should not be granted as prayed for in said petition.

It is further ordered that copies of this order and of the petition herein be served on the respondents.

Y. J. POPE, C. J.

THE STATE OF SOUTH CAROLINA,

IN THE SUPREME COURT.

Original Jurisdiction.

State
vs.
W. J. Murray, John McSween, C. K. Henderson, Avery Patton, and B. F. Arthur.
} Return.

(303) The return of the defendants above named, to the petition of plaintiff, shows to this court.

1.

That they admit the allegations of fact set forth in said petition, but they allege that the ownership of the funds is a matter of construction of law, and they commit that construction to this court.

2.

They allege that they are charged with the duty of determining the amount of the indebtedness of the State of South Carolina, growing out of the said Dispensary, and applying so much of the funds in their hands as may be necessary to the settlement of the same, and the expenses of this Commission, and that said funds are in their hands for that purpose, and for the purpose of paying any balance that may be left thereafter to the said Treasurer for the uses of the State.

3.

That they are restrained and enjoined by orders of the United States Circuit Court for this Circuit from paying any funds into the hands of the State Treasurer, in two cases, to-wit: the case of the Wilson Distilling Company *vs.* W. J. Murray and others, a copy of their bill of complaint being hereto attached and marked "Exhibit A," along with the restraining order in said case, and an amended bill that has just been filed, And further, that they are restrained by an order in the case of the Fleischmann Company *vs.* W. J. Murray and others, a (304) copy of which bill and restraining order and oral decision as announced is hereto attached and marked "Exhibit B."

4.

The return of the respondents to all the cases, in addition to denying allegations of fraud and conspiracy, denied the jurisdiction and maintained the following positions:

First.

The funds in the hands of the "State Dispensary Commission" created by the Act of February 16, 1907, (Acts of 1907, p. 835) belong to and are the property of the State, which has the right to control the same, which, through the said Commission as its agent, is in possession thereof.

Second.

The said "State Dispensary Commission" is the mere agent or instrumentality of the State vested with the ministrial function of winding up the State's Dispensary business, selling the goods and property on hand, collecting the debts due the State in connection with said business and holding the proceeds for the State and subject to its right of disposition thereof. And vested also with the judicial function of investigating all claims against the State in connection with said business and determinating the validity thereof.

And also vested with the ministerial function of paying from the funds held by them for the State such of the said claims as they may upon said investigation find and decide to be just liabilities of the State.

Third.

The pending action is in effect an action against the State, because it seeks to lay hold of the funds belonging to the State and in the hands of the said Commission as its agent and through the said Commission in the possession of the State, and further seeks to have such funds applied to the payment of alleged liabilities of the State.

(305) So that the State is a necessary party to the action.

Fourth.

The State cannot be held to have waived its constitutional immunity from suit by the said Act creating the "State Dispensary Commission" except to the extent of the remedies therein provided for and allowed to claimants for the collection of such debts as may be due them by the State in connec-

tion with its said Dispensary business, and, therefore, such claimants are limited to the remedies therein provided for and allowed.

Fifth.

The said Act creating the "State Dispensary Commission" having passed and the remedies therein provided for having been allowed as a purely voluntary matter on the part of the Legislature of the State, the said Act is subject to be repealed and the allowance of the remedies therein provided for is subject to be recalled at any time at the pleasure of the Legislature and in its discretion.

That they are, therefore, informed and believe that they have no right to pay in the money which they are called upon to pay, under these circumstances, and therefore they pray that the petition may be dismissed.

W. F. STEVENSON,
Attorney for Commission.

Exhibit A.

(Copy.)

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA. IN EQUITY.

Wilson Distilling Co., Complainant, *vs.* W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, Defendants.	Bill of Complaint.

To the Honorable the Judges of the Circuit Court of the United States for the District of South Carolina:

Wilson Distilling Company, a corporation duly created, organized and existing under and by virtue of the laws of the (306) State of New Jersey, and a resident and citizen of said State of New Jersey, having its principal place of business at Baltimore, in the State of Maryland, brings this, its bill of complaint, against W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, citizens and inhabitants of the State and District of South Carolina, the said W. J. Murray residing in the city of Columbia; the said John McSween in the city of Timmonsville; the said B. F. Arthur

in the city of Union; the said C. K. Henderson in the city of Aiken and the said Avery Patton in the city of Greenville, in said State.

And therefore your orator complains and says:

1.

That the Wilson Distilling Company, complainant, is a body corporate under the laws of the State of New Jersey, and is a resident and citizen of the said State of New Jersey, having its principal place of business in the city of Baltimore, in the State of Maryland.

2.

That the defendants are citizens and residents of the State of South Carolina.

3.

That the matter in controversy in this action exceeds in value the sum of two thousand dollars exclusive of interest and cost, as will hereinafter more fully appear.

4.

That on or about the 16th day of February, 1907, the Legislature of the State of South Carolina enacted a statute providing for the appointment of a Commission, to be composed of five persons, to wind up the affairs of the State Dispensary, which had theretofore existed in said State for several years, and which had theretofore been abolished by a prior enactment of the Legislature of said State.

5.

That the defendants, W. J. Murray, John McSween, B. (307) F. Arthur, C. K. Henderson and Avery Patton, were duly appointed members of said Commission, and duly accepted and qualified as such prior to March 17, 1907, and have ever since composed the said Commission.

6.

That said statute provides *inter alia* "It shall be the duty of said Commission to close out the entire business and property of the State Dispensary, except real estate, and including stock in the several County Dispensaries, by disposing of all

goods and property connected therewith, by collecting all debts due and by paying from the proceeds thereof all just liabilities at the earliest date practicable."

7.

That on or about the — day of ———, 1906, your orator sold to the said State Dispensary of the State of South Carolina, through its directors, who were the proper officers authorized by law to purchase wines and liquors for said Dispensary, whiskies and liquors to the amount and value of two thousand nine hundred and seventy-nine and 12-100 dollars ($2,979.12) and your orator shipped said goods to the State Dispensary and the same were accepted by it through its duly authorized officers, and as your orator is informed and believes the same were sold by said Dispensary at a large profit; that an invoice and account of the goods so sold and delivered were duly rendered by your orator to said State Dispensary through its proper officers and agents, and the same was duly accepted and approved and the amount thereof became due to your orator as upon account stated.

8.

That no part of the price of said whiskies and liquors has ever been paid, and the whole thereof was justly due the complainant by said State Dispensary at the time of the appointment of said Commission, and still is justly due it. That said whiskies and liquors so sold to the said Dispensary were reasonably worth the sum of two thousand nine hundred and sev-
(308) enty-nine and twelve one hundredths dollars ($2,-979.12).

9.

Your orator further alleges, upon information and belief, that the defendants have closed out and disposed of all the stock and personal property of said Dispensary, and collected all debts due it, and that said defendants now have on hand funds sufficient to satisfy and pay off all just and proper claims against said Dispensary, but your orator is advised and believes, and so charges, that said defendants deny that there is enough money in the hands of the Commission with which to pay said claims, and that said defendants have lately made such denial in a verified answer filed by them in a cause pending in this court, wherein Garrett & Company are complainants and the defendants above named are defendants.

Your orators are informed, advised and believe and aver the fact to be, that if any such deficiency exists, as is claimed by said defendants, that the same has occurred by reason of the fact that said defendants have approved and allowed, and are about to pay, a large number of claims which have not been properly audited and many of which are for improper and excessive amounts and others of which, for large amounts, are not valid claims against said Dispensary or against the fund in the hands of the defendants by reason of the fact that they are for sales illegally made, in that they did not comply with the laws of said State governing sales to said Dispensary.

10.

Your orator further alleges, upon information and belief, that said defendants propose to, and unless restrained by the order of this court will, arbitrarily pay a portion of the claims against said Dispensary and pay over the balance and a large part of the funds in their hands as aforesaid into the public treasury of the State of South Carolina, And your orator alleges that such proposed action of said defendants would operate to defeat the just claim of your orator and of other persons having just claims against the Dispensary, and against said (309) fund.

11.

Your orator is advised and believes that the enactment of the Legislature of South Carolina, as aforesaid, imposes upon the defendants the duty to pay the claim of your orator out of said moneys in their hands.

12.

That your orator has demanded of defendants the payment of said claim out of said fund, but they have failed and refused and still fail and refuse to pay the same.

13.

That unless they are restrained by preliminary injunction, the defendants will pay *will pay* out on improper claims a large part of the funds in their hands aforesaid and will cover into the public treasury of the State of South Carolina a large part of said fund, to the irreparable damage of your orator and of

other persons having just claims against said Dispensary and against said fund in the hands of the defendants.

14.

Each and every allegation of fact in this bill contained is made upon information and belief of the solicitor for the complainant, by whom the same is verified.

15.

This suit is brought by your orator on its own behalf and on behalf of all other persons having just claims against said State Dispensary, and against the fund in the hands of the defendants, who may hereafter join herein.

To the end, therefore, that your orator may have that relief which it can only obtain in a court of equity, and that the said defendants may answer the premises, but not upon oath or affirmation, an answer under oath being hereby expressly waived by your orator, he now prays the court that a preliminary injunction be issued restraining said defendants and each and every of them from paying over or disposing of said funds to (310) any creditor or to the public treasurer of the State of South Carolina until the proper amounts due each creditor shall have been first duly ascertained and determined as this court may direct until the final hearing herein; and that your orator may have such other, further and general relief in the premises as the nature of the circumstances of the case may require.

May it please your honors to grant to your orator a writ of subpœna to be directed to the said W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, thereby commanding them at a certain time and under a certain penalty therein to be limited personally, to appear before this Honorable Court and then and there full, true, direct and perfect answer make to all and singular the premises, and to stand to, perform and abide by such order, direction and decree as may be made against them in the premises as shall seem meet and agreeable to equity.

And your orator will ever pray.

(Signed) T. M. MORDECAI,
FRANK CARTER, and
H. C. CHEDESTER,
Solicitors for Complainant.

Verification of Bill of Complaint.

THE UNITED STATES OF AMERICA, DISTRICT OF SOUTH CAROLINA.

(311)
Wilson Distilling Company
vs.
W. J. Murray et al.

Frank Carter, being sworn, says that he is one of the solicitors for the complainant in the above entitled suit, and that he verifies this bill of complaint herein on behalf of said complainant; and said verification is made by this affiant for the reason that said complainant is a foreign corporation and that no officer or agent of said corporation capable of making this verification is present within the district or place where said bill of complaint was prepared, to the knowledge or belief of this affiant that the foregoing bill of complaint is true of his own knowledge, except as to the matters therein stated on information and belief and as to those matters he believes it to be true.

(Signed) FRANK CARTER.

Sworn to and subscribed before me this the 30th day of December, 1907.

GILMER WELCH,
[Notarial Seal] Notary Public.

A true copy—Attest:

C. J. MURPHY,
C. C. C. U. S., Dist. S. C.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA. IN EQUITY.

(314)
Wilson Distilling Company, Complainant,
vs.
W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, Defendants.

Order.

Upon hearing read the verified bill of complaint herein, praying for an injunction restraining the defendants, W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, their successors, agents and attorneys, from paying over or disposing of the funds in their hands as Commissioners for the purpose of winding up the State Dispensary of

the State of South Carolina, to any creditor or to the Public Treasurer of said State, until the proper amount due each creditor shall have first been duly ascertained and determined, as the court may direct, until the final hearing herein, and it appearing therefrom that the said defendants may proceed to pay out and pay over said funds to the irreparable damage of the complainant, unless restrained therefrom:

Now, in consideration thereof, and upon motion of T. M. Mordecai, Frank Carter and H. C. Chedester, solicitors for the complainant.

It is ordered, that said defendants, their successors, agents and attorneys, and each and every of them, be, and they are hereby, restrained from paying over or disposing of the funds in their hands as aforesaid, to any creditor or to the Public Treasurer of said State, until the proper amount due each creditor shall have first been ascertained and determined, as the court may direct, until the fruther order of this court.

And it is further ordered, that said defendants be, and they are hereby, required to show cause, if any they have, before me, on the 11th day of January, 1908, at the United States Court-house, in Asheville, in the State of North Carolina, at 10 o'clock in the forenoon, why the said defendants, their successors, agents and attorneys, and each and every of them, should (315) not be so restrained until the final hereing herein.

And it is further ordered, that a copy of this order and of the bill of complaint herein be served upon said defendants.

And it is further ordered, that the complainant above named do execute a bond in the penalty of five thousand dollars ($5,000) conditioned for the payment to the defendants of all damages and costs they or either of them may sustain by reason of this order, should the same hereafter be adjudged to have been improvidently made, as to all or any of them; that said bond shall be duly approved by either of the Circuit Judges of this Circuit, or by any of the District Judges of the District of South Carolina, or by the Clerk of this Court at Asheville, N. C.

And it is further ordered, that any defendant hereto have leave to move before me at any time before the hearing herein ordered upon five days notice to the solicitors for the complainant, to vacate this order or any part thereof, as to such defendant.

Done at Asheville, North Carolina, at Chambers, this the 30th day of December, 1907.

J. C. PRITCHARD,
United States Circuit Judge.

A true copy—Attest:

[Seal]

C. J. MURPHY,
C. C. C. U. S., Dist. S. C.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT,

(316) AT CHARLESTON.

Wilson Distilling Company et al., Complainants,
vs.
W. J. Murray et al., Defendants. } In Equity.

Order.

Upon motion of solicitors for complainants, it is ordered that The National Loan and Exchange Bank, The Palmetto National Bank, The Columbia Savings and Trust Company, all of Columbia, in the State of South Carolina. The Bank of Timmonsville, of Timmonsville, in said State. The Peoples Bank of Union, of Union, in said State. The Bank of Aiken, of Aiken, in said State. The Piedmont Savings and Investment Company, of Greenville, in said State. The Merchants and Farmers Bank of Cheraw, in said State, and the Bank of Camden, of Camden, in said State, be, and they each of them hereby are, made parties defendant in this cause, and it is hereby ordered that subpœnas issue for said parties according to the course and practice of this court.

And it is further ordered that the complainants have leave to file an amended and supplemental bill of complaint in this cause the same to relate and have effect, so far as may be, as of the date of the filing of the original bill of complaint herein.

This the 19th day of February, 1908.

(Signed) J. C. PRITCHARD,
U. S. Circuit Judge.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT, AT CHARLESTON.

(317)

Wilson Distilling Company, Anheuser-Busch Brewing Association and Charles J. Gallagher, Jr., and Edward Burton, Partners as Gallagher & Burton, and John M. Cranston, trading as Jack Cranston Company, Complainants,

vs.

W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson, Avery Patton, The National Loan and Exchange Bank, of Columbia, South Carolina; The Palmetto National Bank, of Columbia, South Carolina; The Columbia Savings and Trust Company, of Columbia, South Carolina; The Bank of Timmonsville, of Timmonsville, South Carolina; The People's Bank of Union, of Union, South Carolina; The Bank of Aiken, of Aiken, South Carolina; The Piedmont Savings and Investment Company, of Greenville, South Carolina; The Merchants' and Farmers' Bank, of Cheraw, South Carolina, and The Bank of Camden, of Camden, South Carolina, Defendants.

In Equity.

Amended and Supplemental Bill of Complaint.

To the Honorable the Judges of the Circuit Court of the United States for the District of South Carolina:

Wilson Distilling Company, a corporation duly created, organized and existing under and by virtue of the laws of the State of New Jersey, and a citizen and resident of said State, Anheuser-Busch Brewing Association, a corporation duly created, organized and existing under and by virtue of the laws of the State of Missouri, and a citizen and resident of said State, and Charles J. Gallagher, Jr., and Edward Burton, partners as Gallagher & Burton, both citizens and residents of the State of Pennsylvania, and John M. Cranston, trading as Jack Cranston Company, a citizen and resident of the State of Georgia, by leave of the court bring this their amended and supplemental

bill of complaint against W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, constituting the State Dispensary Commission of the State of South Carolina, and said defendants individually, all of whom are citizens and (318) residents of said State of South Carolina and the following named corporations, to-wit: The National Loan and Exchange Bank of Columbia, South Carolina, The Palmetto National Bank of Columbia, South Carolina, The Columbia Savings and Trust Company of Columbia, South Carolina, The Bank of Timmonsville, of Timmonsville, South Carolina, The People Bank of Union, of Union, South Carolina, The Bank of Aiken, of Aiken, South Carolina, The Piedmont Savings and Investment Company of Greenville, South Carolina, The Merchants and Farmers Bank of Cheraw, South Carolina and The Bank of Camden, of Camden, South Carolina, all of whom are citizens and residents of the State of South Carolina and thereupon your orators complain and say:

1.

That your orator, Wilson Distilling Company, at all times hereafter mentioned was, and still is, a body corporate under the laws of the State of New Jersey, and is a citizen and resident of said State of New Jersey, having its principal place of business in the City of Baltimore, in the State of Maryland; that your orator, Anheuser-Busch Brewing Association, at all times hereinafter mentioned was, and still is a body corporate under the laws of the State of Missouri, and is a citizen and resident of said last mentioned State, having its principal place of business in the City of St. Louis, in the State of Missouri; that your orators, Charles J. Gallagher, Jr., and Edawrd Burton, partners as Gallagher & Burton, at all times hereinafter mentioned, were and still are, citizens and residents of the State of Pennsylvania; and your orator, John M. Cranston, trading as Jack Cranston Company, at all times hereinafter mentioned was and still is, a citizen and resident of the State of Georgia; and that all said complainants are citizens of the United States and of the States in which they respectively reside as aforesaid.

2.

That the defendants, and each and every of them, are citizens and residents of the State of South Carolina, the said W. (319) J. Murray, residing in the City of Columbia, the said John McSween, residing in the City of Timmonsville, the said B. F. Arthur, residing in the City of Union, the said C. K. Henderson, residing in the City of Aiken, the said Avery Patton

residing in the City of Greenville, the said The National Loan and Exchange Bank is a body corporate residing and having its principal place of business in the City of Columbia, the said The Palmetto National Bank is a body corporate, residing and having its principal place of business in the City of Columbia; the said The Columbia Savings and Trust Company is a body corporate residing and having its principal place of business in the City of Columbia; the said The Bank of Timmonsville, is a body corporate, residing and having its principal place of business in the City of Timmonsville; the said The People Bank of Union is a body corporate, residing and having its principal place of business in the City of Union; the said Bank of Aiken, is a *corporate*, residing and having its principal place of business in the City of Aiken, the said The Piedmont Savings and Investment Company is a body corporate, residing and having its principal place of business in the City of Greenville; the said The Merchants and Farmers Bank is a body corporate, residing and having its principal place of business in the City of Cheraw, and the said the Bank of Camden is a body corporate, residing and having its principal place of business in the City of Camden, all in the State of South Carolina.

3.

That the matter in controversy in this action exceeds in amount and value the sum of two thousand dollars, exclusive of interest and costs, as will hereinafter more fully appear.

4.

Your orators further show that the General Assembly of the State of South Carolina, at its regular session of 1892, passed an Act entitled "An Act to prohibit the manufacture and sale of intoxicating liquors as a beverage within this State, except as herein provided," the same being Act No. 28 of said session, which was duly approved December 24, 1892, which (320) said Act is hereby expressly referred to, and asked to be taken as a part hereof; said Act provided *inter alia*, "That on and after the first day of July, A. D., 1893, the manufacture, barter, sale, or exchange, or keeping or offering for sale, barter, trade or exchange within this State of any spirituous malt, vinous, fermented or other intoxicating liquor, or any compound or mixture thereof, by whatever name called, which will produce intoxication, by any person, business firm, corporation or association, shall be regulated and conducted as provided in this Act;" and provided further for a Board of Control, and also provided for the appointment of a Commis-

sioner, who was required, under such rules and regulations as might be made by said State Board of Control, to purchase all alcoholic liquors for lawful use within said State, and to sell the same to the various County Dispensaries as provided in said Act. Said Act further provided that all money arising from the sale of liquors by the said Commissioner should be deposited with the State Treasurer, to be held by him as a separate and distinct fund, with which fund the said Treasurer was required to keep a separate account, and further provided that the expenses incurred in conducting said business should be paid out of said fund upon warrants drawn by said Commissioner and duly approved by said State Board of Control, and no part of said fund could be lawfully paid out by said Treasurer except upon warrants so issued.

The business and monopoly thus established became known and was thenceforth recognized in the legislation of said State as the State Dispensary. By subsequent legislation amendatory of said Act of 1892, the method of conducting the business of said State Dispensary underwent various changes; the Board of Directors of the State Dispensary was thereafter created, and upon it were devolved most, if not all of the powers and duties of said State Board of Control and certain of the duties and powers of said Commissioner, including the duty and power to purchase all alcoholic liquors and other supplies for said State Dispensary; but all moneys received from said business were always required to be kept and maintained as a separate (321) and distinct fund, subject to be drawn upon for the purpose of paying the expenses incurred in the conduct of said business.

5.

And your orators further show that while the Act set out in the last preceding paragraph hereof, amended as aforesaid, was still in force, your orators severally duly sold to said Board of Directors of the State Dispensary, at prices mutually satisfactory and agreed upon, large quantities of alcoholic liquors, which were duly accepted and sold by the said Directors of the State Dispensary at a substantial profit in accordance with said Act, and the proceeds of such sales were, in due course of administration, deposited in and became a part of the fund hereinbefore referred to, all of which will hereinafter more fully appear.

6.

And your orators further show that afterwards, at its session held in the year 1907, the General Assembly of the State of South Carolina passed an Act providing for the abolition

of said State Dispensary, which act was duly approved on February 16, 1907, and section 47 of which is as follows:

"Section 47. The State Dispensary is hereby abolished, and all Acts and parts of Acts inconsistent with this Act are hereby repealed; Provided, That this Act shall not have the effect of preventing any violation of the present criminal law relating to the Dispensary being punished as now provided by law for offences heretofore committed."

That at the same session the said General Assembly of the State of South Carolina, passed another Act, approved on the same day as said Act abolishing said State Dispensary, to-wit: February 16, 1907, entitled "An Act to provide for the disposition of all property connected with the State Dispensary, and to wind up its affairs," which said Act is in words and figures as follows:

SESSION LAWS, S. C., 1907.

"No. 402.

(322) "An Act to provide for the disposition of all property connected with the State Dispensary and to wind up its affairs.

"Section 1. Be it enacted by the General Assembly of the State of South Carolina that immediately upon the approval of this Act, the Governor shall appoint a Commission of well known business men, consisting of five members, none of whom shall be members of the General Assembly, to be known as the State Dispensary Commission, who shall each give bond for the faithful performance of the duties required in the sum of $10,000.

"Sec. 2. Said Commission shall immediately organize by the election of a Chairman and Secretary from their number.

"Sec. 3. It shall be the duty of said Commission to close out the entire business and property of the State Dispensary, except real estate, and including stock in the several County Dispensaries by disposing of all goods and property connected therewith, by collecting all debts due and by paying from the proceeds thereof all just liabilities at the earliest date practicable. Said Commission shall be at liberty to make such disposition upon such terms, times and conditions as their judgment may dictate: Provided, That no alcoholic liquors or beers shall be disposed of within the State, except to County Dispensary

Boards, and all liquors illegally bought by the present management may be returned to the persons, firms or corporations from whom purchased, and for determining the legality of said purchases they are hereby authorized and directed to investigate fully the circumstances surrounding all contracts for liquors, and to employ such assistant counsel as may be approved by the Attorney-General, and such expert accountants and stenographers and any other person or persons the Commission may deem necessary for the ascertainment of any fact or facts connected with said State Dispensary and its management or control at any times in the past and to take testimony, either within or without the State: Provided, further, That all payments shall be made in gold and silver coin of the United States, in United States Currency or in National Bank Notes.

(323) Sec. 4. The Compensation of each member of said Commission shall be $5.00 per day for each day actually employed about the business and actual expenses for the time engaged: Provided, that they shall receive no compensation for services rendered on this Commission after January 1st, 1908.

Sec. 5. The said Commission shall pay to the State Treasurer after deducting their compensation and other expenses allowed by this Act, all surplus funds on hand after paying all liabilities.

Sec. 6. The said Commission is hereby authorized to employ such bookkeepers, accountants, clerks, assistants and employees as they may deem necessary and to contract with them at the time of employment for their compensation.

Sec. 7. The said Commission shall submit to the Governor, at the earliest day practicable, a complete inventory of all property received by them, with a statement of the liabilities of the State Dispensary, and, as soon as the affairs are liquidated, a report in full of their actings and doings.

Sec. 8. That said Commission shall have full power and authority to investigate the past conduct of the affairs of the Dispensary, and all the power and authority conferred upon the Committee Appointed to investigate the affairs of the Dispensary, as prescribed by an Act to Provide for the Investigation of the Dispensary, approved January 24th, A. D., 1906, be, and hereby is, conferred upon the Commission provided for under this Act: Provided, That for the purpose of the investigation of the affairs of the Dispensary as herein provided, each and every member of said Commission be, and hereby is,

authorized and empowered, separately and individually or collectively, to exercise the power and authority herein conferred upon the whole *Committee*.

"Approved the 16th day of February, A. D., 1907."

(324) That within a short time thereafter the Commission provided in said Act was created by the appointment of the defendants, W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, as Commissioners, and said defendants having duly qualified and organized pursuant to the said Act, became and do now constitute the State Dispensary Commission, and as such are charged with the execution of all the powers conferred, and the performance of all the duties imposed upon said Commission by the said Act.

7.

And your orators further show that immediately upon their qualifications as Commissioners and organization as the State Dispensary Commission, the defendants entered upon the discharge of their duties and, in accordance with the Act providing for their appointment, took possession and control of the entire business and property of the said State Dispensary, including the money which at that time was deposited with the State Treasurer to the credit of the Board of Directors of said State Dispensary, and said defendants have sold the property of said State Dispensary, except real estate, and collected many of the debts due to the said State Dispensary, and now have in their hands, and deposited with the several defendant banks and in other depositories within the State of South Carolina, the names of which are unknown to your orators, the proceeds arising from said sales and collections, which, together with the sum so received from said State Treasurer amounts to about eight hundred thousand dollars ($800,000) as your orators are informed and believe, and the sum so held in the hands of said defendants is applicable to the payment of the just liabilities of said State Dispensary, and to the other uses and purposes designated in said Act.

8.

And your orators further show that prior to the passage of said Acts of February 16, 1907, and while the said State Dispensary was still engaged in business, said complainant, Wilson Distilling Company, duly sold and delivered to it at prices which were entirely reasonable and mutually satisfactory, a

large quantity of valuable alcoholic liquors, which were duly (325) received and accepted by said State Dispensary, and have been sold and disposed of by it at a substantial profit; that said sales and deliveries were in all respects regular and legal, and were made upon orders properly and lawfully given by persons duly authorized to give such orders, and under a lawful contract, promise and agreement, that said complainant should be paid, the prices charged therefor; by reason whereof said State Dispensary became and at the time the defendants, Murray, McSween, Arthur, Henderson and Patton, took charge of said business and property was, and still is, justly indebted to said complainant in the just and full sum of twenty-nine hundred and seventy-nine and 12/100 dollars ($2,979.12), that no part of said sum has been paid, and that the same constitutes in favor of said complainant, a just liability of said State Dispensary, and by reason of the matters and things hereinbefore alleged, and particularly by the terms of said Act of February 16, 1907, last above mentioned, said funds in the hands of said defendants became, was and is impressed with a trust for the payment thereof, and said defendants, Murray, McSween, Arthur, Henderson and Patton were and are charged with the ministerial duty to pay the same to said complainant.

9.

And your orators further show that, prior to passage of said Act of February 16th, 1907, and while the said State Dispensary was still engaged in business, said complainant, Anheuser-Busch Brewing Association, duly sold and delivered to it at prices which were entirely reasonable and mutually satisfactory, a large quantity of valuable alcoholic liquors, which were duly received and accepted by said State Dispensary and have been sold and disposed of by it at a substantial profit; that said sales and deliveries were in all respects, regular and legal and were made upon orders properly and lawfully given by persons duly authorized to give such orders, and under a lawful contract, promise and agreement, that said complainant should be paid the prices charged therefor; by reason whereof said State Dispensary became, and at the time of the passage of said Act, and at the time the defendants, Murray, McSween, Henderson, Arthur and Patton took charge of said business and (326) property, was, and still is, justly indebted to said complainant in the just and full sum of nine thousand five hundred and fifty-one dollars (*19*,551) that no part of said sum has been paid, and that said sum constitutes, in favor of said complainant, a just liability of said State Dispensary, and by reason of the matters and things hereinbefore alleged, and particu-

larly by the terms of said Act of February 16, 1907, last above mentioned, said funds in the hands of said defendants became, was and is impressed with a trust for the payment thereof, and said defendants Murray, McSween, Arthur, Henderson and Patton were and are charged with the ministerial duty to pay the same to said complainant.

10.

And your orators further show that, prior to the passage of said Act of February 16, 1907, and while the said State Dispensary was still engaged in business, said complainants, Charles J. Gallagher, Jr., and Edward Burton, partners as Gallagher & Burton, duly sold and delivered to it at prices which were entirely reasonable and mutually satisfactory, a large quantity of valuable alcoholic liquors, which were duly received and accepted by said State Dispensary, and have been sold and disposed of by it at substantial profit, that said sales and deliveries were in all respects regular and legal, and were made upon orders properly and lawfully given by persons duly authorized to give such orders, and under a lawful contract, promise and agreement that said complainants should be paid the prices charged therefor; by reason whereof the said State Dispensary became, and at the time of the passage of said Act of February 16th, 1907, and at the time the defendants, Murray, McSween, Arthur, Henderson & Patton, took charge of said business and property, was, and still is, justly indebted to said complainants, which said indebtedness now amounts to the just and full sum and balance of five thousand three hundred and one and 41/100 dollars ($5,301), that no part of said sum (327) has been paid, and that said sum constitutes in favor of said complainants a just liability of said State Dispensary and, by reason of the matters and things hereinbefore alleged, and particularly by the terms of said Act of February 16, 1907, last above mentioned, said funds in the hands of said defendants became, was and is impressed with a trust for the payment thereof, and said defendants, Murray, McSween, Arthur, Henderson & Patton, were and are charged with the ministerial duty to pay the same to said complainants.

11.

And your orators further show that, prior to the passage of said Act of February 16, 1907, and while the said State Dispensary was still engaged in business, said complainant, John M. Cranston, trading as Jack Cranston Company, duly sold and delivered to it, at prices which were entirely reasonable

and mutually satisfactory, a large quantity of valuable *valuable* alcoholic liquors, which were duly received and accepted by said State Dispensary, and have been sold and disposed of by it at a substantial profit; that said sales and deliveries were in all respects regular and legal, and were made upon orders properly and lawfully given by persons fully authorized to give such orders, and under a lawful contract, promise and agreement that said complainant should be paid the prices charged therefor; by reason whereof the said State Dispensary became and at the time of the passage of said Act of February 16th, 1907, and at the time the defendants, Murray, McSween, Arthur, Henderson and Patton took charge of said business and property, was, and still is, justly indebted to said complainant in the just and full sum of five thousand and fifty-one and 50/100 dollars ($5,051.50) that no part of said sum has been paid, and that said sum constitutes in favor of said complainant a just liability of said State Dispensary, and, by reason of the matters and things hereinbefore alleged, and particularly by the terms of said Act of February 16, 1907, last above mentioned, said funds in the hands of said defendants became, was and is impressed with a trust for the payment thereof, and said defendants, Murray, McSween, Arthur, Henderson and Patton were and are charged with the ministerial duty to pay the same to said complainant.

(328) 12.

And your orators further show that, as they are informed and believe, the defendants, Murray, McSween, Arthur, Henderson & Patton, have received from the sale of the property of the said Dispensary and the collections of debts due it, and now have in their hands on deposit in the defendant banks and other depositories, a large sum of money, amounting to eight hundred thousand dollars ($800,000) or thereabouts, and that said sum if properly preserved and applied, will be amply sufficient to pay off and discharge the claims of your orators and all other just liabilities of said State Dispensary, which said liabilities do not, as your orators are informed and believe, exceed the sum of six hundred and nine thousand dollars ($609,000), all which facts will more fully appear from the report made by said defendants to the Governor of the State of South Carolina, on or about the fourth day of January, 1908, to which report reference is hereby made.

13.

And your orators further show that, as they are informed, advised and believe, the money received by the defendants,

Murray, McSween, Arthur, Henderson and Patton, and held by them as herein before alleged, having been placed in their possession for the specific purpose of paying all the just liabilities of the said State Dispensary, became and now constitutes a trust fund in the hands of said defendants, and the said defendants hold the same as trustees for your orators, and the other creditors of the said State Dispensary, and said defendants became, were and are charged with the ministerial duty of paying all said just liabilities of said State Dispensary to your orators and to the other persons, firms, corporations, and associations respectively entitled thereto.

(329) 14.

And your orators further show that all the money realized from the sale of the property of the said State Dispensary and the collection of debts due to it pursuant to the provisions of the Act aforesaid, has been from time to time as received by the defendants constituting the State Dispensary Commission, and is now deposited to credit of said Commission, in the defendant banks and other depositories in the State of South Carolina subject to withdrawal only by said Commission and no part of said money is in the Treasury of the State of South Carolina or has ever been mingled with any funds belonging to said State.

15.

And your orators, further show that said defendants, Murray, McSween, Arthur, Henderson and Patton, have abused and are abusing the trusts reposed in them as aforesaid in manner and the particulars following, that is to say:

(a) They have wrongfully and unlawfully failed and refused to pay the just claims of your orators and of other persons, firms and corporations having just claims against the said State Dispensary and in and upon said trust funds, and have wrongfully and unlawfully failed and refused to pay the just liabilities of said State Dispensary at the earliest date practicable, as required by said Act of February 16, 1907.

(b) They have unlawfully, and for the wrongful purpose of avoiding, delaying and defeating the payment of the just liabilities of the said State Dispensary, denied their said trust, and denied that they owed any duty to the creditors of the said State Dispensary.

(c) They have wrongfully and unlawfully exceeded the powers conferred upon them by law and have usurped and presumed to exercise the powers of a court and have unlawfully attempted to arrogate to themselves exclusive jurisdiction of all claims against said State Dispensary and against the funds in their hands.

(d) The powers and functions so unlawfully and wrong-
(330) fully usurped by them they have exercised in a partial, unfair and oppressive manner,, and the hearings and proceedings had by them upon the claims of persons, firms and corporations who allege themselves to be creditors of said State Dispensary and to be entitled to share in said fund have not been designed chiefly, if at all, to ascertain the just liabilities of said State Dispensary, but have had for their principal purpose the provision of some more or less plausible excuse for refusing to pay the just liabilities of said State Dispensary and the procurement of evidence to be used by the Attorney General of said State in his proposed criminal prosecutions of alleged Dispensary grafters so-called, and in furtherance of this latter design they have wrongfully required the attendance of non-resident persons as witnesses upon claims against said fund with the sole or principal object of enabling such Attorney General to have criminal process executed upon said persons while within the jurisdiction of said State in obedience to said requirement, and they have knowingly and wrongfully acquiesced in the wrongful refusal of the said Attorney General, to grant immunity from arrest to said non-resident persons while present in said State in obedience to said requirement, and at the same time have wrongfully refused to pass upon or allow such claims without the personal presence of such non-resident persons at their hearings within said State.

(e) They are wrongfully seeking, or they wrongfully acquiesce in other persons seeking for them, an amendment to said Act of 1907, having for its purpose the legalizing of their usurpations of the powers and functions of a court, and their wrongful claim of exclusive original jurisdiction, as such court, of all claims against said Dispensary and against said fund in their hands, as aforesaid.

(331) (f) They wrongfully seek, by the usurpations aforesaid and through the proposed legislation aforesaid to place said fund beyond the reach of this court and every other regular organized court of general jurisdiction, and thereby render it impossible for your orators and other persons having just claims against said State Dispensary and against said fund to realize

anything upon their said claims, through any legal proceedings, or otherwise, except such amounts as they, in the exercise of the alleged exclusive jurisdiction aforesaid, may be pleased to allow to them.

(g) They deny the right of your orators and other persons having just claims against said Dispensary and against said fund to have their said claims litigated in a court of general jurisdiction, and are attempting, through the proposed legislation aforesaid, to make such denial effectual.

And all and every the unlawful and wrongful acts and doings aforesaid they still continue and threaten to do, to the great wrong and irreparable injury of your orators.

16.

And your orators further show that said defendants, by their conduct and usurpations aforesaid, and through the proposed legislation aforesaid, seek to deny to your orators and all other persons having just claims against the State Dispensary and against said fund, the right of trial by jury guaranteed by the Constitution of the State of South Carolina, and they further seek to deprive your orators, and all other persons having just claims against said State Dispensary and against said fund, of their property without due process of law, and to deny to them the equal protection of the laws, in violation of their rights under the Constitution of the United States and Article XIV., Section 1, of the Amendments thereof, the protection whereof is hereby expressly claimed by your orators.

17.

And your orators further show that there are a large number of persons claiming to be creditors of the said State Dis-
(332) pensary and seeking to collect from the defendants various sums ranging in amount from one, or a few, to many thousands of dollars; that some of said persons, for the purpose of compelling the payment of their debts, have already brought suit against said defendants, and others are, as your orators are informed and believe, threatening to institute similar actions; and if said defendants shall be required or permitted to defend a multiplicity of said suits in order to determine the validity of each claim against them, and shall be allowed to defer the payments of all claims until the final termination of said suits, a large part of the funds in their hands will be wasted in expensive litigation and court costs, and a great wrong, injustice and injury will be done to your orators, and to all other persons hav-

ing just claims against said State Dispensary and against said fund.

18.

Each and every allegation of fact in this bill of complaint contained is made upon the information and belief of the solicitor for the complainant by whom the same is verified.

19.

This suit is brought by your orators on their own behalf and on behalf of all other persons having just claims against said State Dispensary and against said fund in the hands of said defendants, who may hereafter desire to join herein and to contribute to the expenses hereof.

In consideration whereof, and for as much as your orators are without remedy and can obtain adequate relief only in a court of equity, and to the end that the defendants may be prevented from committing further wrongs and trespasses against the rights of your orators, and for the purpose of preserving the fund in the hands of the defendants and of enforcing the rights and equities of your orators in the same, and preventing further waste, loss and damage by reason of the facts alleged in this bill, your orators pray:

(1) That this Honorable Court will forthwith appoint a (333) receiver to take charge of and administer as a trust fund all the money now in the hands of the defendants arising out of the sale of property belonging to said State Dispensary of South Carolina, or from the collection of debts due it.

(2) That the defendants, their agents, servants, attorneys, employees and depositories, be restrained and enjoined from disposing of or paying out, or in any manner interfering further with the said fund or any part thereof, except to transfer the same to the receiver appointed by the court.

(3) That it be referred to a Master to ascertain and determine the amount due to your orators and other creditors upon their claims against the said State Dispensary and against said fund in the hands of said defendants, and that a decree be entered ordering and directing that the amounts so found to be due be immediately paid to your orators respectively. That the defendants be required to set forth an account of all and every sum or sums of money received by them, or either of them, or which ought to have been received by them, or which has been received by any person or persons by their or either

of their orders, or for their or either of their use, from the sale of any property of said State Dispensary or the collection of any debt or debts due to it, and when and from whom, and from what in particular, all and every such sums were respectively received, and where deposited and held, and how the same, respectively, have been applied or disposed of.

And that your orators have such other and further relief in the premises, and as to the court may seem meet and proper. And may it please your honors to grant unto your orators a writ of injunction conformable to the prayer of this bill, and also a writ of subpœna directed to all the defendants not heretofore served with subpœna commanding them, and each of them, to appear and answer this bill of complaint, but not under oath, discovery and answer under oath being hereby expressly waived as to all and every of the defendants herein, and to stand to, perform and abide such orders, directions and decrees, in the (334) premises as to the court shall seem meet or be required by the principles of equity and good conscience.

(Signed) T. MOULTRIE MORDECAI,
FRANK CARTER, and
H. C. CHEDESTER,
Solicitors for Complainants.

Verification of Bill of Complaint.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

(335)

Wilson Distilling Company et al., Complainants,
vs.
W. J. Murray et al., Defendants.

Frank Carter, being sworn, says that he is one of the solicitors for the complainants in the above entitled suit, and that he verified this amended and supplemental bill of complaint herein on behalf of said complainants; that said verification is made by this affiant for the reason that said Wilson Distilling Company and said Anheuser-Busch Brewing Association are foreign corporations, and that no officer or agent of said corporations, or either of them, capable of making said verification is present within the District of South Carolina or at the place where said bill of complaint was prepared, to the knowledge or belief of this affiant, and that said Charles J. Gallagher, Jr., and Edward Burton, partners as Gallagher and Burton and John M. Cranston, trading as Jack Cranston Company, are non-residents of

the State and District of South Carolina and neither of said parties is present within said District of South Carolina, or at the place where said bill of complaint was prepared, to the knowledge or belief of this affiant, that the foregoing bill of complaint was prepared to the knowledge or belief of this affiant; that the foregoing bill of complaint is true of his own knowledge, except as to those matters therein stated upon information and belief and as to those matters he believes it to be true.

(Signed) FRANK CARTER.

Sworn to and subscribed before me this the 19th day of February, 1908.

(Signed) JOSEPH P. BRADY,
Clerk U. S. Circuit Court for Eastern District of Virginia.

Upon the back of said Amended and Supplemental Bill of Complaint appears the following endorsement:

(336) "Filed by leave of Court this February 19th, 1908.

(Signed) J. C. PRITCHARD,
U. S. Circuit Judge."

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT, AT CHARLESTON. IN EQUITY.

(337)

Wilson Distilling Co. et al., Complainants,
vs.
W. J. Murray et al., Defendants.

Order to Show Cause.

Upon considering the amended and supplemental bill of complaint this day filed in the above entitled cause, it is now, on motion of the solicitors for the complainants, ordered and adjudged that the defendants be and appear before the undersigned Judge, at his Chambers, in Asheville, North Carolina, at 10 o'clock A. M., on the 29th day of February, 1908, and show cause, if any they have, why the relief prayed for in said bill shall not be granted, and why a receiver shall not be appointed and injunction issued as therein prayed.

Let a copy of this order, together with a copy of said amended and supplemental bill of complaint, be forthwith served upon each of the defendants.

This the 19th day of February, 1908.

(Signed) J. C. PRITCHARD,
U. S. Circuit Judge.

UNITED STATES OF AMERICA,
Fourth Circuit.
District of South Carolina.

(338)

The President of the United States of America to The National Loan and Exchange Bank, of Columbia, South Carolina, The Palmetto National Bank, of Columbia, South Carolina; The Columbia Savings and Trust Company of Columbia, South Carolina; The Bank of Timmonsville, of Timmonsville, South Carolina; The Peoples Bank of Union, of Union, South Carolina; The Bank of Aiken, of Aiken, South Carolina; The Piedmont Savings and Investment Company of Greenville, South Carolina; The Merchants and Farmers Bank of Cheraw, South Carolina; and The Bank of Camden, Camden, South Carolina, Defendants:

You are hereby strictly commanded and firmly enjoined that all manner of excuses being laid aside, you be and appear before the Judges of the Circuit Court of the United States for the District of South Carolina, at Charleston, on Monday the 6th day of April, 1908, twenty days after the service thereof; then and there true and perfect answer to make upon your corporal oath on the Holy Evangelists, to all such matters as shall be objected against you in the Amended and Supplemental Bill of Complaint of Wilson Distilling Company, a body corporate under the laws of the State of New Jersey and a citizen and resident of said State; Anheuser-Busch Brewing Association, a body corporate under the laws of the State of Missouri, and a citizen and resident of said State; Charles J. Gallagher, Jr., and Edward Burton, partners as Gallagher and Burton, citizens and residents of the State of Pennsylvania; and John M. Cranston, trading as Jack Cranston Company, a citizen and resident of the State of Georgia.

And, also, That you do, on the rules day next immediately after the day appointed and expressed, file, or cause to be filed, in the Registry of said Court, your plea, answer or demurrer, to the said bill of complaint.

(339) Herein fail not, under the pain of one hundred pounds.

Given under the seal of the said court.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States of America, at Charleston, in the District aforesaid, the —— day of February, in the year of our Lords one thousand nine hundred and eight, and in the one hundred and thirty-second year of the Sovereignty and Independence of the United States of America.

T. MOULTRIE MORDECAI,
FRANK CARTER and
H. C. CHEDESTER,
Complainant's Solicitors.

[Seal of Court]

C. J. MURPHY,
C. C. C. U. S., Dist. S. C.

Memorandum.

The defendants will take notice that they are required to enter their appearance in this suit, in the Clerk's office of the Circuit Court of the United States for the District of South Carolina, on or before first Monday of April, 1908, otherwise the bill will be taken *pro confesso* against you.

C. J. MURPHY,
C. C. C. U. S., Dist. S. C.

Exhibit B.

(340)

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT, AT COLUMBIA.

The Fleischmann Company, Complainant,
vs.
W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, constituting the State Dispensary Commission of South Carolina, and W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, individually, Defendants.
} In Equity.

Bill of Complaint.

To the Honorable Judges of the Circuit Court of the United States for the District of South Carolina:

The Fleischmann Company, a corporation organized and existing under and by virtue of the laws of the State of Ohio,

and a citizen of said State, brings this, its bill against W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, constituting the State Dispensary Commission of the State of South Carolina, and said defendants individually, all of whom are citizens and residents of said State of South Carolina, and, thereupon, your orator complains and says:

I.

That your orator, the Fleischmann Company, was at all times hereinafter mentioned, and still is, a corporation, duly created, organized and existing, under and by virtue of the laws of the State of Ohio and is a citizen and resident thereof, having its principal office in the City of Cincinnati, in said State, and that the defendant W. J. Murray, is a citizen and resident of the State of South Carolina, residing at Columbia, in said State; the defendant John McSween, is a citizen and resident of said State of South Carolina, residing at Timmons-
(341) ville, of said State of South Carolina; the defendant B. F. Arthur, is a citizen and resident of the said State of South Carolina, residing at Union, in said State; that the defendant C. K. Henderson, is a citizen and resident of the State of South Carolina, residing at Aiken, in said State, and the defendant Avery Patton, is a citizen and resident of the State of South Carolina, residing at Greenville, in said State.

II.

And your orator further shows that many years prior to the passage of the Act hereinafter mentioned, there was duly created and established by law, in the State of South Carolina, an institution for the purpose of buying, selling and distributing alcoholic liquor within said State, known as the State Dispensary, and that by the terms of the law creating and establishing said Dispensary, the managing agents or officers thereof were duly authorized, directed and empowered to purchase in its name and on its behalf, all kinds of spirituous, vinous and malt liquors, and to pledge the credit of the said State Dispensary for the payment of the same.

III.

And your orator further shows that the General Assembly of the State of South Carolina, at its session held in the year 1907, for the purpose of discontinuing said State Dispensary, disposing of its assets, and paying off its creditors, passed an

Act entitled "An Act to provide for the Disposition of all property Connected with the State Dispensary and to Wind up its affairs," which said Act is in words and figures as follows:

"SESSION LAWS, S. C., 1907.

"No. 402.

"An Act to provide for the disposition of all property connected with the State Dispensary, and to wind up its affairs.

"Sec. 1. Be it enacted by the General Assembly of the State of South Carolina, that immediately upon the approval of this Act, the Governor shall appoint a Commission of well known business men consisting of five members, none of whom (342) shall be members of the General Assembly, to be known as the State Dispensary Commission, who shall each give bond for the faithful performance of the duties required, in the sum of $10,000.

"Sec. 2. Said Commission shall immediately organize by the election of a Chairman and a Secretary from their number.

Sec. 3. It shall be the duty of said Commission to close out the entire business and property of the State Dispensary, except real estate, and including stock in the several County Dispensaries by disposing of all goods and property connected therewith, by collecting all debts due and by paying from the proceeds thereof all just liabilities at the earliest date practicable. Said Commission shall be at liberty to make such disposition upon such terms, times and conditions as their judgment may dictate: Provided, that no alcoholic liquors or beers shall be disposed of within the State except to County Dispensary Boards, and all liquors illegally bought by the present management may be returned to the persons, firms or corporations, from whom purchased, and for determining the legality of said purchases, they are hereby authorized and directed to investigate fully the circumstances surrounding all contracts for liquors, and to employ such assistant counsel as may be approved by the Attorney-General and such expert accountants and stenographers, and any other person or persons the Commission may deem necessary for the ascertainment of any fact or facts connected with said State Dispensary and its management or control at any time in the past, and to take testimony, either within or without the State: Provided, further, that all payments shall be made in gold and silver coin of the United States, in United States Currency or in National Bank Notes.

Sec. 4. The compensation of each member of said Commission shall be $5.00 per day for each day actually employed about the business and actual expenses for the time engaged: Provided, that they shall receive no compensation for services (343) rendered on this Commission after January 1st, 1908.

Sec. 5. The said Commission shall pay to the State Treasurer, after deducting their compensation and other expenses allowed by this Act, all surplus fund on hand after paying all liabilities.

Sec. 6. The said Commission is hereby authorized to employ such bookkeepers, accountants, clerks, assistants and employes as they may deem necessary, and to contract with them at the time of employment for their compensation.

Sec. 7. The said Commission shall submit to the Governor at the earliest day practicable, a complete inventory of all property received by them, with a statement of the liabilities of the State Dispensary, and, as soon as the affairs are liquidated, a report in full of their actings and doings.

Sec. 8. That said Commission shall have full power and authority to investigate the past conduct of the affairs of the Dispensary, and all the power and authority conferred upon the Committee appointed to investigate the affairs of the Dispensary, as prescribed by an Act to provide for the investigation, of the Dispensary, approved January 24th, A. D., 1906, be and hereby is, conferred upon the Commission provided for under this Act; provided, that for purpose of investigation of the affairs of the Dispensary as herein provided each and every member of said Commission be and hereby is, authorized and empowered separately and individually, or collectively to exercise the power and authority herein conferred upon the whole Commission.

Approved the 16th day of February, A. D., 1907.

IV.

That the said act was duly approved on the 16th day of February, 1907, and within a short time thereafter the Commission therein provided for was created by the appointment of the defendants, as Commissioners, and said defendants hav- (344) ing duly qualified and organized pursuant to said Act, became, and do now constitute the State Dispensary Commission, and as such are charged with the execution of all the

powers conferred and the performance of all the duties imposed upon said Commission by the said Act.

V.

That, immediately upon their qualifications and organization as hereinbefore alleged, the defendants entered upon the discharge of said duties, and in accordance with the directions contained in said Act, took possession and control of the entire business and property of the State Dispensary, and have, as your orator is informed and believes, sold said property and collected the debts due to said State Dispensary and the proceeds arising from said sale and collections are, or ought to be, in the hands of said defendants, applicable to the payment of the liabilities of said State Dispensary, and to the other uses and purposes designated in said Act.

VI.

And your orator further shows that, prior to the passage of the said Act of 1907, providing for a sale of the property of the said State Dispensary, and the winding up of its affairs, and while the said State Dispensary was still engaged in business, your orator sold and delivered to it at prices which were entirely reasonable and mutually satisfactory, a large quantity of valuable whiskies and other spirituous liquors, all of which whiskies and liquors were received and accepted by said State Dispensary, and had been, except as hereinafter alleged, sold or disposed of by it at a substantial profit; that the sales so made by your orator were, in every respect, regular and legal and were made upon orders properly and lawfully given by the persons duly authorized to give such orders; and the whiskies were delivered to said State Dispensary under a contract, promise and agreement, that your orator should be paid the prices charged therefor and the said State Dispensary became and was at the time of the passage of said Act, and at the time the defendants took charge of said business and property, and still is, justly (345) indebted to your orator for the same.

VII.

That, within a short time after the appointment and qualification of the defendant and their organization as the State Dispensary Commission, your orator being desirous of having its account against the State Dispensary settled, and in order that all differences might be reconciled, or disputes, if any, adjusted, and the amount due to your orator fixed and determined,

filed with said defendants an itemized statement of its account and requested the defendants to have the same audited so that it could be passed upon; that, thereafter the defendants notified your orator that there was still on hand and undisposed of a portion of the whiskey which your orator had sold to the said State Dispensary, and asked your orator to take back said whiskey and allow a credit therefor, then and there holding out as an inducement to your orator for so doing, that if they were permitted to return said goods, it would greatly facilitate a settlement with your orator and enable them to make a much earlier payment of the account, and your orator being anxious to remove every possible cause of delay in obtaining a settlement of its claim, did take back all of said goods, and give credit therefor at the invoice price thereof.

VIII.

That, on or about the 24th day of May, 1907, the defendants advised your orator that, in comparing its account with the books kept by the State Dispensary, they had discovered a discrepancy between the amount claimed by your orator and the amount shown by said books to be due of $292.14 growing out of certain credits to which the said State Dispensary was entitled, and which your orator had failed to allow, but that, in every other particular, your orators' account was, according to the audit made by the defendants, correct, and corresponded with the said books, and that if your orator would allow said credit there would be no further dispute as to the amount due (346) to your orator, and your orator being still anxious to get its account adjusted and receive payment of the same, did consent that said sum might be deducted, and, thereupon, it was agreed between your orator and the defendants, that there was, on the date above mentioned, a balance of $66,501.19, justly due and owing to your orator by the said State Dispensary, which said sums the defendants then and there agreed to pay, but notwithstanding your orator has made frequent demands on them, they have refused and still refuse to pay the same.

IX.

And your orator further shows that, as it is informed and believes, the defendants have received from the sale of the property of the State Dispensary and the collection of debts due it, and now have in their hands a large sum of money, amounting to upwards of $800,000.00, and that this sum if properly preserved and applied, will be amply sufficient to pay off and discharge the claim of your orator and all other just liabilities of

said State Dispensary, which said liabilities do not, as your orator is informed and believes, exceed the sum of $609,000.00, all of which facts will more fully appear from the report made by the defendants to the Governor of the State of South Carolina, on or about the 4th day of January, 1908, to which report reference is hereby made for the ascertainment of said amounts.

X.

That, as your orator is advised and believes, the money received by the defendants and held by them as hereinbefore alleged, having been placed in their possession for the specific purpose of paying all the just liabilities of the State Dispensary, became and now constitutes a trust fund in the hands of said defendants, and the said defendants hold the same as trustees for your orator and the other creditors of the said State Dispensary, and the amount due your orator having been determined and agreed upon your orator is entitled to have said amount immediately paid to it out of said fund.

XI.

(347) And your orator further shows that said defendants are abusing the trusts reposed in them by wrongfully and unlawfully failing and refusing to carry out the terms and provisions of said Act of 1907 of the General Assembly of the State of South Carolina, and that the greater part of the money which the defendants have received, as aforesaid, has been on deposit for many months, and is now on deposit in certain banks in the State of South Carolina, in which banks the said defendants, or some of them, are respectively interested, either as officers, stockholders or directors; that a large sum of said money is now in the National Loan and Exchange Bank of Columbia, in which bank the defendant Murray, who is the Chairman of the Dispensary Commission is a large stockholder and director; that another large portion of said money is deposited in the Bank of Timmonsville, in which said bank the defendant McSween is a stockholder and a director, and is also its President; that another large portion of said money is on deposit in the Peoples Bank, of Union, in which bank the defendant Arthur is a stockholder and a director and also its President; that another large portion of said money is on deposit in the Bank of Aiken, in which bank the defendant Henderson is a stockholder and director; that another portion of said money is deposited in the Piedmont Savings and Investment Company, of Greenville, in which the defendant Patton is a stockholder and director and a portion of the said money is deposited in the Mer-

chants and Farmers Bank, of Cheraw, in which bank one W. F. Stevenson, who resides in the said town of Cheraw, and who is the attorney for the defendants constituting the State Dispensary Commission is a stockholder and director and also its President.

That the said defendants have wrongfully, unlawfully and fraudulently declined and refused to make distribution of the said money among the creditors of said State Dispensary, or to pay the claim of your orator, or any of the other of said creditors, for the reason, as your orator verily believes and alleges (348) the fact to be, that there has been formed and now exists an unlawful understanding or agreement between the defendants by which it has been decided that the money deposited in the banks above named shall be held and allowed to remain as long as possible in said banks and be used by them for their own benefit and profit.

XII.

And your orator further shows that there are a large number of persons claiming to be creditors of the said State Dispensary and seeking to collect from the defendants various sums ranging in amount from one to many thousand dollars; that some of said persons, for the purpose of compelling the payment of their debts, have already brought suit against said defendants, and others are, as your orator is informed and believes, threatening to institute similar actions; and if the defendants shall be required or permitted to defend a multiplicity of such suits in order to determine the validity of each claim against them, and shall be allowed, as they have declared their intention to do, to defer the payment of all claims until the final termination of said suits, a large part of the funds in their hands will be wasted in expensive litigation and court costs, and a great wrong, injury and injustice will be done to your orator and the other creditors whose claims are admitted to be just and correct, and about which there is and can be no dispute.

XIII.

And your orator further shows that, although the said defendants have in their hands the large sum of money hereinbefore mentioned, and although they are wrongfully and unlawfully retaining said money for the use and benefit of institutions in which they are personally interested, and are wrongfully and unlawfully refusing to carry out and perform the duties and trusts imposed upon them by the General Assembly of the State of South Carolina, the said defendants have only given bonds in

the sum of $10,000.00 each, and they are now, as your orator (349) is informed and believes, threatening to take measures to have an Act passed by the General Assembly of South Carolina terminating their commission and providing for a transfer of the money in their hands to the State Treasurer, which money ought to be applied to the payment of the debts due to your orator and the other creditors of the said State Dispensary, and thus, if possible, place the same beyond the reach, or by some other means, impair the contract rights of your orator and said other creditors, and, as your orator is advised and believes, unless the defendants are restrained and enjoined from exercising any control over or in any way interfering further with said fund, the said defendants will waste or wrongfully divert the same to the great and irreparable damage of your orator and all the other creditors of the State Dispensary.

XIV.

And your orator further shows, upon information and belief, that there is a very wide difference between the opinions of the defendants as to the duties required of them as members of the Dispensary Commission, and the proper manner of performing said duties; that the defendant B. F. Arthur, although still a member of said Commission, has declined and refused to take any further part in the proceedings thereof, and has not, for at least eight months, attended any of the meetings of said Commission, or participated in any of its deliberations; that the other four defendants as members of said Commission are about equally divided as to what course ought to be pursued with reference to the ascertainment of the just liabilities of the State Dispensary and the payment of the same, and that, by reason of such division, the said defendants have become engaged in a dispute among themselves, which renders it almost impossible for them ever to agree upon any plan by which to carry out the provisions of the Act of 1907 of the General Assembly of South Carolina, and to execute the trust imposed upon them by said Act and as your orator is advised and believes, unless this honorable court shall take charge of the trust fund now in the hands of the defendants as members of said Commission and administer the same in accordance with the provisions of the said Act of 1907, your orator and the other creditors of (350) said State Dispensary, will, to their great and irreparable damage, be indefinitely delayed in the collection of their claims.

XV.

And your orator further shows, upon information and belief, that the defendants now allege and pretend that there were

certain irregularities and fraud in connection with some of the sales of liquors made to the former officers of the State Dispensary, and the defendants have entered into an unlawful combination of conspiracy with one J. Fraser Lyon the present Attorney-General of the State of South Carolina, and under whose advice the said defendants are acting, to aid the said Lyon is carrying out his frequent threats to prosecute and imprison said officers, and to that end, have agreed among themselves and with said Lyon to withhold the payment of the claim of your orator and all other creditors, until the said Lyon has obtained such evidence as may be sufficient to prove the guilt and secure the conviction of said officers; and that under and pursuant to this agreement, combination of conspiracy the defendants have refused and are still refusing to carry out the provisions of the Act of 1907 and to pay the claim of your orator and the other just liabilities of said State Dispensary, although the account of your orator has been duly audited, the amount claimed admitted to be justly due and payable, as hereinbefore alleged, and notwithstanding the fact that the defendants have never made any pretense or claim that either of the sales made by your orator was, in any respect, irregular, illegal or fraudulent, and notwithstanding the frequent promises and agreements by the defendants to pay the amount so admitted to be due.

XVI.

And your orator further shows, that, notwithstanding the fact that the amount claimed by your orator has been admitted by the defendants to be a just liability, against the said State Dispensary and now due and payable out of the fund in their hands and although the said defendants have never claimed or pretended that said amount was subject to any offsets, credits (351) or counter-claims, your orator is ready, able and willing, if this honorable court shall direct that the amount due to it be immediately paid, to execute and deliver to the said defendants a good and sufficient bond in such sum as may be required by this honorable court to the full amount of its claim, if necessary, conditioned to pay to the said defendants all such amounts as may be, upon the hearing of this cause, found and adjudged to be due by your orator to these defendants by way of offset, reduction, credit, counter-claim or otherwise.

In consideration whereof, and for as much as your orator is without remedy and can obtain adequate relief only in a Court of Equity, and to the end that the defendants may be prevented from committing further wrongs and trespasses against the rights of your orator, and for the purpose of pre-

serving the funds in the hands of the defendants and of enforcing the rights and equities of your orator in and to the same, and preventing further waste, loss and damage, by reason of the facts alleged in this bill, your orator prays:

(1) That this Honorable Court will either forthwith appoint a receiver to take charge of and administer as a trust fund all the money now in the hands of the defendants arising out of the sale of the property belonging to the State Dispensary of South Carolina or from the collection of debts due it; or direct and decree that the amount admitted to be due to your orator be immediately paid to it upon the execution of your orator of a good and sufficient bond to be approved by the court and conditioned to pay to the defendants all such sum or sums as may be found to be due them by your orator and adjudged to be paid by it.

(2) That the defendants, their agents, servants, attorneys and employees be restrained and enjoined from disposing of or paying out, or in any manner interfering further with said fund or any part thereof, except to transfer the same to the receiver appointed by the court, or to pay the amount due to your orator as the court may direct.

(3) That it be referred to a Master to ascertain and deter-
(352) mine the amount due to your orator for goods sold and delivered by it to the said State Dispensary, and that a decree be entered ordering and directing that the amount so found to be due be immediately paid to your orator. That the defendants be required to set forth an account of all and every sum or sums of money received by them, or which has been received by any person or persons, by their or either of their orders, or for their or for either of their use, from the sale of any property of the said State Dispensary or the collection of any debt or debts due it, and when and from whom, and from what in particular, all, and every such sums were respectively received, and how the same respectively have been applied or disposed of.

And that your orator have such other and further relief in the premises as the nature of the circumstances of this case may require and as to the court may seem meet and proper;

And may it please your Honors to grant unto your orator a writ of injunction, conformable to the prayer of this bill, and also a writ of subpœna directed to the said defendants, commanding them, and each of them, to appear and answer this bill of complaint, but not under oath, answer under oath being hereby expressly waived, and to stand to, perform and

abide by such orders, directions and decrees in the premises as to the court shall seem meet or be required by the principles of equity and good conscience.

(Signed) THE FLEISCHMANN CO.,
By CASPER H. ROWE.

MERRICK and BARNARD,
GEO. B. LESTER,
Solicitor for Complainant.

STATE OF NORTH CAROLINA,
County of Buncombe,

On this the 20th day of January, 1908, before me personally appeared Casper H. Rowe, who being first duly sworn, says: That he is an officer of the complainant corporation, The Fleischmann Company, to-wit, its treasurer, and makes this affidavit in (353) its behalf; and that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters, he believes it to be true.

(Signed) CASPER H. ROWE.

Sworn to and subscribed before me this the 20th day of January, 1908.

(Signed) PHILIP R. MOALE,
Notary Public.
My commission expires September 11th, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT, AT COLUMBIA.

The Fleishmann Company, Complainant,
vs.
W. J. Murray and others, Defendants.

Upon considering the bill of complaint filed in this cause, it is now, on motion of the solicitors for the *complaint*, ordered and adjudged that the defendants be and appear before the undersigned judge, at his Chambers, in Asheville, North Carolina, at 10 o'clock a. m. on the 29th day of January, 1908, and show cause, if any they have, why the relief prayed for in said bill shall not be granted, and why a receiver shall not be appoint-

ed by this court to take charge of and administer all of the funds now in the hands of the said defendants, arising from the sale of property belonging to the State Dispensary, or from the collection from any debts due to it.

Let a copy of this order, together with a copy of the bill, be served forthwith upon each of the defendants.

This the 21st day of January, 1908.

(Signed) J. C. PRITCHARD,
United States Circuit Judge.

A true copy—Attest:

C. J. MURPHY,
[Seal] C. C. C. U. S., Dist. S. C.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT, AT COLUMBIA.

The Fleishmann Company, Complainant,
vs.
W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, constituting the State Dispensary Commission of South Carolina and W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, individually, Defendants.
} In Equity.

Affidavit of George B. Lester.

George B. Lester, being first duly sworn, says:

That he is general counsel for the complainant above named, and also a member of a special committee appointed by certain creditors of the South Carolina State Dispensary, for the purpose of obtaining an adjustment and settlement of their claims against the defendants; that as such general counsel for the complainant and member of said Committee, affiant has spent much time in the City of Columbia, where the defendants constituting the Dispensary Commission, hold their sessions that during affiants' visits to Columbia, he has had frequent conversations with numerous persons, business men and citizens of Columbia, who are familiar with the affairs of the State Dispensary and well acquainted with the defendants, or some of them, that in a large number of these conversations

affiant was informed, and it was the prevailing opinion among those acquainted with Dispensary matters, that the next session of the General Assembly of the State of South Carolina would take some steps or would pass some Act looking to an abolition of the Dispensary Commission and the disposition of the funds in the hands of the defendants. Affiant was also informed by one of the officials connected with the defendants constituting (356) the State Dispensary Commission that legislation would be asked for in the form of a bill providing for the abolition of the Dispensary Commission and the establishment of a Court of Claims to pass upon and determine the amounts due to the various creditors of the State Dispensary and for a transfer of the funds now in the hands of the Commission to the State Treasurer.

Affiant further states that the General Assembly of the State of South Carolina is now in session, and that, from information which has come to affiants' knowledge since the filing of the bill and the issuing of the order to show cause in this suit, he has reason to believe and does verily believe, that some attempt will be made to have the said General Assembly pass some bill, the object of which is to remove the funds now in the hands of the defendants beyond the jurisdiction of this court, and that, on January 21st, 1908, there appeared an article in "The State," a newspaper of wide circulation and influence in the City of Columbia, in which article it was suggested that such action could be easily taken; that the defendants and their counsel are contending that the money now in the hands of the defendants constituting the Dispensary Commission is a State fund, and, as such, the present General Assembly has entire control over the same, and that any suit brought by any creditor of the State Dispensary seeking to enforce any claim against said fund is a suit against the State; and affiant verily believes and alleges the fact to be, that it is the object and purpose of the defendants to avoid, if possible, the payment of the claim of the complainant, and all other creditors, and that, in view of the application which has been made to the court for the appointment of a receiver to take charge of said fund, it is the purpose of the said defendants, or their attorneys or representatives, to thwart the action of the plaintiff by taking some immediate steps to put this money beyond the reach of this court and thus deprive the complainant of any relief in this suit.

Affiant further states, on information and belief, that in addition to the amounts deposited in the banks mentioned in complainants' bill of complaint, to-wit, the National Loan and (357) Exchange Bank of Columbia, The Bank of Timmonsville, The Peoples' Bank of Union, The Bank of Aiken, The Piedmont Savings and Investment Company of Greenville, The

Merchants and Farmers Bank of Cheraw, some portion of said funds is held by the Palmetto National Bank of Columbia, The Columbia Savings Bank and Trust Company and The Bank of Camden.

And affiant further shows that, under the former order to show cause entered in this case, complainant has no protection against a dissipation or diversion of the funds in the hands of the defendants, or in the depositaries above named, other than a writ of injunction heretofore granted by this court in the case of Wilson Distilling Company against said defendants, in which case the complainant in this case has no interest or right to be heard, and if the said injunction should be, either by consent of parties, or otherwise, dissolved, said defendants, as affiant verily believes, would at once take steps to place the funds under their control beyond the reach of this court, either by securing an Act of the Legislature, as above suggested, or by some other means, and, as affiant is advised and believes, for the reasons set forth in this affidavit and the complainants' bill the complainant is entitled to and ought to be allowed an order restraining said defendants and the depositaries in which said defendants have place the funds under their control, from in any way paying out any of said funds, removing same beyond the jurisdiction of this court, or taking any action tending to or which might prevent the complainant from obtaining the full relief to which it is entitled in this cause.

Wherefore, affiant prays that the depositaaries above named be made parties to this cause, and the order heretofore made, be so amended as to restrain and enjoin said defendants and said depositaries from interfering with, paying out, transferring or in any wise changing the present status of said funds, until the further orders of this court.

(Signed) GEO. B. LESTER.

Sworn to and subscribed before me this 22d January, 1908.

(Signed) W. SCOTT RADEKER,
Notary Public.
My commission expires November 14, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT, AT COLUMBIA.

(358)

The Fleischmann Company, Complainant, *vs.* W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, constituting the State Dispensary Commission of South Carolina and W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, individually, Defendants.	In Equity.

RESTRAINING ORDER.

It having been made to appear to the court, since the signing of the order to show cause, heretofore granted in this case, that there is reasonable ground to apprehend that the defendants may, before the return day of said order, make some attempt to place the funds now in their hands, and for which a receiver has been asked, beyond the jurisdiction of this court, and that it is necessary, in order to secure the complainants' rights, that said funds shall remain *in statu quo*;.

It is now, on motion of solicitors for the complainant, ordered and adjudged that the defendants and each of them, their agents, servants, attorneys and employees, and the following named depositaries, to-wit: The National Loan and Exchange Bank, The Palmetto National Bank, The Columbia Savings and Trust Company, all of Columbia, South Carolina; The Bank of Timmonsville, of Timmonsville, South Carolina; The Peoples Bank of Union, South Carolina; The Bank of Aiken, South Carolina; The Piedmont Savings and Investment Company of Greenville, South Carolina, The Merchants and Farmers Bank of Cheraw, South Carolina, and the Bank of Camden, South Carolina, which depositaries are hereby made parties defendant to this cause, and all other banks or depositaries, (359) if any, in which said funds, or any part thereof, is now deposited, their officers, agents, servants, attorneys, and employees, be, and they are each hereby restrained and enjoined from interfering with, paying out or transferring to any person or persons whomsoever, or in any way disturbing or changing the present status of said funds, or any part thereof, and from taking any steps with reference to the said funds tend-

ing to, or which may put said funds beyond the jurisdiction of this court until the further orders of this court.

This January 22d, 1908.

(Signed) J. C. PRITCHARD,
U. S. Circuit Judge.

A true copy—Attest:
[Seal] C. J. MURPHY,
C. C. C. U. S., Dist. S. C.

His decision is reported in the newspaper as follows:

"That, as the State of South Carolina has seen fit to engage in the purchase and sale of spirituous liquors, it can not be reasonably contended that in so doing it is performing the functions usually exercised by a State when necessary to preserve its autonomy and maintain its sovereignty.

"The Supreme Court of that State has decided that the Act authorizing the establishment of a Dispensary was constitutional, However, it can hardly be assumed that it was contemplated at the time of the adoption of the 11th amendment that a sovereign State would engage in the purchase and sale of spirituous liquors for profit.

"The State having seen fit to engage in this business, and at the same time to deprive its citizens of the right to engage in such business in competition with the State, thereby placed itself in a position where it could not, with consistency, avail itself of the immunity conferred by the 11th amendment in a suit like the one at bar, in which it is sought to collect a debt contracted by the individuals placed in control of such business with implied if not direct authority to contract such debts. Having deprived its citizens of a right to engage in this partic-
(360) ular line of business, reserving the right to monopolize the business through its agents appointed for that purpose, it would be manifestly unjust to permit the State, under any circumstances whatsoever, to avoid the payment of debts contracted by the purchase of goods from the sale of which it has derived enormous profits."

The Dispensary matter was brought up in court to-day on an order of Judge Pritchard signed on motion of the Wilson Distilling Company and other creditors, citing the Dispensary Commission to appear and show cause why a receiver should not be appointed for the $800,000 fund now held by them. Before the hearing in this case Judge Pritchard informally announced his decision in the matter of the jurisdiction of the

court in the Fleischmann case, which was also a suit asking for a receiver for the Dispensary fund.

The court maintained that the defendants, the Dispensary Commissioners, were not officers of a court in the strict sense; that they were merely officers to perform a certain specific duty. He said that the sum of $800,000 was placed in the hands of the Dispensary Commissioners to settle all just liabilities of the Dispensary and that it was clearly a trust fund.

The judge declared that the suit is not a suit against the State and added: "I have carefully considered this whole matter, and had I any doubt I would give the defendants the benefit of that doubt and rule in favor of the State. There is no doubt in my mind, however, and, therefore, the court takes jurisdiction."

THE STATE OF SOUTH CAROLINA,

(361)

In the Supreme Court.

Original Jurisdiction.

The State of South Carolina ex rel. J. Fraser Lyon, Attorney-General, Petitioner,

vs.

W. J. Murray, John McSween, C. K. Henderson, Avery Patton and B. F. Arthur, Respondents.

TRAVERSE TO RETURN.

The petitioner herein replies to and traverses the answer and return of W. J. Murray, John McSween, C. K. Henderson, Avery Patton and B. F. Arthur, as State Dispensary Commission, respondents, as follows:

1.

As to the objection raised by the respondents that they are, as the State Dispensary Commission, restrained and enjoined from paying out, or an any wise interfering with the funds in their hands, arising from the assets and property of the late State Dispensary, by injunction of his Honor, J. C. Pritchard, Judge of the Circuit Court of the United States, petitioner joins issue with the respondents and alleges that the petition in the case of Wilson Distilling Company et al. *vs.* State Dispensary Commission, and the petition in the case of the Fleischmann Company *vs.* State Dispensary Commission,

together with the exhibits and orders therewith, show that the said proceedings are suits against the State of South Carolina, and that the Circuit Court of the United States is utterly without jurisdiction to, in any manner, entertain the same, or to interfere with, or to, in any wise, restrain the action of the said Commission.

2.

Further, by way of traverse and reply, petitioner says that the property and assets in the hands of the State Dispensary Commission, arising from the assets and property of the late (362) State Dispensary, are the sole property of the State of South Carolina, and the affairs of the late State Dispensary are now being concluded and wound up under the terms of an Act of the General Assembly of the State of South Carolina approved the 16th day of February, 1907, and amended by an Act approved the 24th day of February, 1908; that the Commission in dealing with said funds cannot be controlled, nor can the disbursement or use of said funds be directed by any court in equity or otherwise, in any suit in which *in with* the State of South Carolina is not a party, as the interests of the State would be necessarily affected directly by any decree or judgment rendered in such suit.

J. FRASER LYON,
Attorney-General, Petitioner.

Decision of Supreme Court of South Carolina on Petition for Mandamus.

(363) Filed March 27th, 1908.

THE STATE OF SOUTH CAROLINA, IN THE SUPREME COURT,
NOVEMBER TERM, 1907. FIFTH CIRCUIT,
RICHLAND COUNTY.

The State of South Carolina ex rel. J. Fraser Lyon, Attorney-General, Petitioner,
against
W. J. Murray, John McSween, C. K. Henderson, Avery Patton and B. F. Arthur, as State Dispensary Commission, Respondents.

OPINION BY C. A. WOODS, A. J.

The General Assembly by an act approved 24th February, 1908, appropriated the sum of $15,000 to be paid by the

State Dispensary Commission out of any funds in its hands into the State Treasury for the use of the Attorney-General in the conduct of criminal prosecutions, against persons charged with violations of laws connected in any manner with the State Dispensary. For the enforcement of his official rights, Hon. J. Fraser Lyon, Attorney-General, filed his petition for mandamus on 2nd March, 1908, in this court against W. J. Murray, John McSween, C. K. Henderson, Avery Patton and B. F. Arthur, as the State Dispensary Commission. The petition alleges the custody by the Commission of State funds sufficient to make the payment of the sum appropriated, the demand for payment by the State Treasurer, and the refusal by the Commission to comply with his demand. The petition further alleges the payment by the Commission of the sum appropriated to be a plain ministerial duty required by statute, and its prayer is for a writ of mandamus requiring the performance of this duty. Upon this petition, the Chief Justice made an order requiring the respondents, as the State Dispensary Commission, to show cause in this court on 4th March, 1908, why the mandamus should not issue as prayed for.

The State Dispensary Commission in its return and answer (364) admits the statute above recited requires of them the payment of the sum therein mentioned to the State Treasurer, and their custody of funds sufficient to meet the requirement, and the refusal to make the payment. As justification of its refusal to comply with the statute, the Commission alleges: "That they are restrained and enjoined by orders of the United States Circuit Court for this Circuit from paying any funds into the hands of the State Treasurer, in two cases, to-wit: The case of the Wilson Distilling Company *vs.* W. J. Murray and others, a copy of their bill of complaint being hereto attached and marked "Exhibit A" along with the restraining order in said case, and an amended bill that has just been filed. And further, that they are restrained by an order in the case of the Fleischmann Company *vs.* W. J. Murray and others, a copy of which bill and restraining order and oral decision as announced is hereto attached and marked "Exhibit B."

The answer sets out that these orders of injunction were made by the Circuit Court of the United States, notwithstanding respondents plea on the following grounds to the jurisdiction of the court: "1. The funds in the hands of the State Dispensary Commission created by the Act of February 16, 1907, (Acts of 1907, p. 385,) belong to and are the property of the State, which has the right to control the same, and, which, through the said Commission as its agent, is in possession thereof. "2. The said 'State Dispensary Commission' is the mere agent or instrumentality of the State vested with the minister-

ial function of winding up the State Dispensary business, selling the goods and property on hand, collecting the debts due the State in connection with said business, and holding the proceeds for the State and subject to its rights of disposition thereof, and also vested with the ministerial function of paying the funds held by them for said State such of the said claims as they may upon said investigation find and decide to be just liabilities of the State. "3. The pending action is in effect an action against the State, because it seeks to lay hold of the funds belonging to the State and in the hands of said Commis-
(365) sion as its agent and through the said Commission in the possession of the State, and further seeks to have such funds applied to the payment of alleged liabilities of the State.

4. The State cannot be held to have waived its constitutional immunity from suit by the said act creating the State Dispensary Commission except to the extent of the remedies therein provided for and allowed to claimants for the collections of such debts as may be due them by the State in connection with its Dispensary business, and therefore, such claimants are limited to the remedy therein provided for and allowed.

5. The said Act creating the "State Dispensary Commission" having been passed and the remedies therein provided for having been allowed as a purely voluntary matter on the part of the legislature of the State, the said act is subject to be repealed and the allowance of the remedies therein provided for is a subject to be recalled at any time at the pleasure of the Legislature and in its discretion."

The pleadings in the causes in the Federal Court will not be set out in detail. It is sufficient to say the actions were brought by the plaintiffs therein named, claiming to be creditors for liquor sold to the State Dispensary against the respondents constituting the State Dispensary Commission; and in those actions the Circuit Court of the United States has made orders enjoining the respondents from disposing of, except by order of that court, the fund of $800,000, which came into their possession as the Commission appointed and organized under the Statutes of the State to wind up the State Dispensary, and contemplating the adjudication by that court of the claim of the plaintiffs and others and the complete control of the entire fund for the satisfaction of such claims as the court might adjudge to be just.

Replying to the return of the Commission made in this cause, the Attorney-General alleges, first: "That the petition

in the case of Wilson Distilling Company et al. vs. State Dis-
(366) pensary Commission and the petition in the case of the Fleischmann Company *vs.* State Dispensary Commission, together with the exhibits and orders therewith, show that the said proceedings are suits against the State of South Carolina, and that the Circuit Court of the United States is utterly without jurisdiction to, in any manner, entertain the same, or to interfere with, or to, in anywise, restrain the action of the said Commission; "and second" that the property and assets in the hands of the State Dispensary Commission arising from the assets and property of the late State Dispensary, are the sole property of the State of South Carolina, and the affairs of the late State Dispensary are now being concluded and wound up under the terms of an Act of the General Assembly of the State of South Carolina approved the 16th day of February, 1907, and amended by an act approved the 24th day of February, 1908; that the Commission in dealing with said funds cannot be controlled, nor can the disbursement or use of said funds be directed by any court in equity or otherwise, in any suit in which the State of South Carolina is not a party, as the interests of the State would be necessarily affected directly by any decree or judgment rendered in such suit."

From this statement of the pleadings, it is evident no issue of fact arises. It is equally evident that if the Circuit Court of the United States had jurisdiction to enjoin the respondents as the State Dispensary Commission, their answer is a complete defence to the petition for mandamus, for no court would entertain for a moment an application to require parties to do that which they had been required and enjoined not to do by judicial authority. But a judgment by a court without jurisdiction of the parties and subject matter is a nullity and must be so treated by other courts whenever and for whatever purpose it is presented and relied on. Elliott *vs.* Piersol, 1 Pet., 328, 7 L. Ed., 164; Hickey's Lessee *vs.* Stewart, 44 U. S., 730, 11 Ed., 814; *Ex parte* Bradley, 74 U. S., 364, 19 L. Ed., 214; Fischer *vs.* Harnden, 9 Fed. Cas., No. 4819; Gray *vs.* Larrimore, 10 Fed. Cas., No. 5721; Devall *vs.* Taylor, Cheves, 5;
(367) McCall *vs.* Cohen, 13 S. C., 198; State *vs.* Penny, 19 S. C., 218; Canady *vs.* Black, 34 S. C., 194; Stanley *vs.* Stanley, 35 S. C., 94; Paul *vs.* Railway Co., 50 S. C., 23; Beaudrot *vs.* Murphy, 53 S. C., 118.

This principle applies as well to an order of injunction made by a court without jurisdiction, interposed against an application for mandamus, as to any other order or judgment. Ellingsworth *vs.* Carlson, (Neb.), 101 N. W., 1004; State *vs.* Miller (Ohio), 39 N. E., 24; State *vs.* Graves (Neb.), 92 N. W., 144. The exception is that a decree of the Supreme Court

of the United States is binding on all the courts of the land, and the decisions of the appellate courts of each State and of the United States are binding upon the courts subordinate to them.

The consideration of the question whether that which purports to be the judgment of another court is void for lack of jurisdiction, is always to be entered on with deference by the court before which the question is made; and the opinion of a court of exalted dignity and acknowledged ability in favor of its own jurisdiction, like its opinion on other subjects, should have a strong persuasive influence in favor of the conclusion it has reached. There is no reason for anxiety or asperity on account of differences between courts of the United States and the State courts. These differences must sometimes arise under our dual system of government, but they are consistent with cordial amity between the courts and may be readily and finally settled by the Supreme Court of the United States, without hardship to the parties interested, and without sacrifice of their rights.

With the greatest respect for the learned judge who has made the orders of injunction relied on by the respondents in *the* this controversy, and after careful consideration of the opinion filed in support of those orders, this court has reached the conclusion that the Circuit Court of the United States has undertaken to assume jurisdiction of a matter in which the political rights and property interests of the State of South Carolina are vitally involved, without the consent of the State. By (368) those orders not only has that court essayed to take charge and administer the property of the State without its consent, but it has also undertaken to assume control of and wind up a distinct department of the government of a sovereign state, in disregard of the plan which the State itself had adopted and decreed by the solemn enactment of its General Assembly. If these conclusions can be sustained by a consideration of the Constitution and statutes of the State, then it will be conceded the proceedings in the Federal Court were attempts to sue the State of South Carolina without its consent, and the matters which that tribunal has undertaken to adjudge were beyond the jurisdiction of any court; and therefore its orders of injunction must be regarded as nullities affording no legal protection to the respondents.

The principle that one of the States of the United States cannot without its consent be sued in any court by a private citizen was thus expressed and crystallized in the 11 amendment of the Constitution of the United States: "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of

the United States by citizens of another State, or by citizens or subjects of any foreign state." It is now generally held that exemption from such a suit is an incident of sovereignty not dependent on the constitutional provision. Kawansnakoa *vs.* Polyblank, 205 U. S., 347, 51 L. Ed., 834.

The claims of the alleged creditors, whose rights the Federal Court undertakes to adjudicate, are for alleged debts contracted in the operation of *in* the State Dispensary; and the funds out of which that court is attempting to satisfy them were derived from the assets of the State Dispensary. Therefore, in determining whether the suits in the Federal Court are for the adjudication of the State's liabilities and the disposition of the State's property, and so not cognizable by any court, it is essential to ascertain and state the relation the State Dispensary bore to the State of South Carolina.

(369) In the year of 1892, this State by Act of General Assembly, entered upon an interesting experiment in the management of the liquor traffic by taking entire charge of the business, and making it a State monoply. State officers were designated to manage the enterprise and the funds necessary for its conduct were drawn from the State Treasury. The Board of Control, consisting of the Governor, the Comptroller General, and the Attorney General was clothed with the power to make rules and regulations for its management. Subject to these rules, the purchase of liquors, and the distribution of them to the subordinate Dispensaries was intrusted to an officer called a Commissioner. The business was made by the Statute as essentially a part of the government as the management of its taxes or its public schools, and all the assets became as much the property of the State as its asylum and other public institutions, or the funds in the vaults of the Treasury. The act was vigorously attacked in the courts as unconstitutional on the ground that the conduct of such a business was not within the police power of the State and was entirely without the sphere of governmental function. The constitutionality of the act, in so far as it provided for the State to own all the liquor brought into the State for sale and to monopolize the sale of liquor within the State, was finally established by the judgment of this court in State *vs.* Aiken, 42 S. C., 222, and subsequently by the judgment of the Supreme Court of the United States in Vandercook *vs.* Vance, 170 U. S., 443.

Subsequently, the following provision was incorporated into the Constitution of 1895: "The General Assembly may license persons or corporations to manufacture and sell retail alcoholic liquors or beverages within the State under such rules and restrictions as it deem proper; or the General Assembly may prohibit the manufacture and sale and retail of alcoholic

liquors and beverages within the State, and may authorize and empower State, County, and municipal officers, all or either, *under the authority and in the name of the State*, to buy in any (370) market and retail within the State liquors and beverages in such packages and quantities, under such rules and regulations as it deems expedient." Under this provision of the Constitution, a new Dispensary statute was enacted (22 Stat., 123,) changing in some particulars the details of the original Dispensary law, but retaining in the entirety the scheme of State ownership and control. The State Dispensary and all its assets acquired under this statute are to be regarded the property of the State, and the debts contracted in its lawful management are to be regarded the debts of the State, not only by virtue of the judgment of highest courts of the land, but also by virtue of the express declarations of the Constitution of the State. With these lights before it, this court held in State *vs.* Farnum, 73 S. C., 165, that the State Dispensary was as much a part of the State government and as subject to as full legislative investigation and control as the State Treasury.

It is nothing to the purpose to say the liquor trade should not have made an integral part of the State government. The fact is it was so made. Whether as such part of the State government it was a success or a disastrous failure is a question for political discussion apart from this controversy as to its legal status.

In the next place, it is to be observed the statutes nowhere give any legal remedy whatever to those who sold liquor to the directors of the State Dispensary and thereby became creditors of the State. Such creditors were dependent entirely upon the good faith of the State to discharge its obligations.

This brings us to the pivotal question: Has the State in closing out this department of the government in the form in which it formerly existed conferred by statute upon creditors the right to sue for the establishment and collection of these debts due from the State, and by statute set apart the public funds derived from the disposition of its Dispensary assets to be subject to seizure and final disposition under judicial order. (371) It seems hardly necessary to say there is no legal requirement that the State shall manage its financial affairs or any branch of them through one general fiscal agent called its Treasurer, or that its funds or any portion of them should be kept in one office called its Treasury. The State Treasurer is a constitutional officer but his duties and powers depend entirely upon the will of the General Assembly of the State. Presumably the State funds are in his hands, but the General Assembly may require the public funds or any part of them to be put in any place or with any person it seems fit; and there is

no limit to its discretion in imposing conditions and conferring discretion on its fiscal agents as to the disbursements of these funds to its creditors. When the discretion is conferred by the State, no court can supplant the agent of the State and substitute for his discretion its own judgment. In the case of Buchanan *vs.* Alexander, 4 Howard, 20, certain boarding-house keepers attempted to attach wages due to seamen from funds in the hands of the purser of the United States frigate "Constitution." The court said: "The important question is, whether the money in the hands of the purser, though due to the seamen for wages, was attachable. A purser, it would seem cannot, in this respect, be distinguished from any other disbursing agent of the Government. If the creditors of these seamen, by process of attachment, divert the public money from its legitimate and appropriate object, the same things may be done as regards the pay of our officers and men of the army and navy; and also in every other case where the public funds may be placed in the hands of an agent for disbursement. To state such a principle is to refute it. No government can sanction it. At all times it would be found embarrassing and under some circumstances it might be fatal to the public service.

The funds of the government are specifically appropriated to certain national objects, and if such appropriations may be diverted and defeated by state process or otherwise, the functions of the government may be suspended. So long as money remains in the hands of a disbursing officer, it is as much the money of the United States as if it had not been drawn from (372) the Treasury. Until paid over by the agent of the government to the person entitled to it, the fund cannot in any legal sense be considered a part of his effects. The purser is not the debtor of the seamen. The same principal was involved and decided in Oregon *vs.* Hitchcock, 202 U. S., 50 L. Ed., 934; Naganab *vs.* Hitchcock, 202 U. S., 473, 50 L. Ed., 1113; Lowry vs. Thompson, 25 S. C., 424; Hopkins *vs.* Clemson College, 77 S. C., 12.

By the Statute of 16th February, 1907, (25 Stat., 1), the State Dispensary was abolished and the County Dispensary system for the sale of liquor under State authority was established in its stead. On the same day an act was passed entitled "An Act to provide for the disposition of all property connected with the State Dispensary and to wind up its affairs." The act provides for the appointment by the Governor of a Commission composed of five members. The powers and duties of this Commission stated in short form were: To close out the entire business and property of the State Dispensary except the real estate, by selling the assets, collecting debts due and paying from the sales and collections all just liabilities at the ear-

liest date practicable; to sell the liquors on hand to the County Dispensaries if it saw proper but to no other person in the State; to return liquors illegally bought and to determine the legality of "said purchases" by investigating fully the circumstances surrounding all contracts for liquor;" to employ such assistant counsel as may be approved by the Attorney-General, and such expert accountants and stenographers and any other person or persons the Commission may deem necessary for the ascertainment of any fact or facts connected with said State Dispensary and its management or control at any time in the past, and to take testimony either within or without the State; "to pay to the State Treasurer after deducting expenses" all surplus funds after paying all liabilities;" to "submit to the Governor at the earliest day practicable a complete inventory of all property received by them, with a statement of the liabilities of the State Dispensary, and as soon as the affairs are liquidated a re-
(373) port in full of their actions and doing." By the last section of the act, it was provided: "That the said Commission shall have full power and authority to investigate the past conduct of the affairs of the Dispensary, and all the power and authority conferred upon the Committee appointed to investigate the affairs of the Dispensary, as prescribed by an Act to provide for the investigation of the Dispensary, approved 24th January, A. D., 1906, be, and hereby, is, conferred upon the Commission provided for under this Act *Provided*, That for the purpose of investigation of the affairs of the Dispensary as herein provided, each and every member of said Commission be, and hereby is, authorized and empowered, separately and individually, or collectively to exercise the power and authority herein conferred upon the whole Commission."

The last section is of prime importance because the act conferred upon the Commission the same authority as was conferred on the investigating committee acting under the statute of 24th January, 1906; and by that statute was conferred on the Committee this power: "The Committee be, and they are hereby, authorized and directed to order the Commissioner of the State Dispensary to withhold the payment of any claims against the State Dispensary or any officer thereof, or the claims of any creditor against the said State Dispensary or any of its officers, which they may deem*ed* advisable, until same is duly proved by the production of the books of original entry, and all documents and correspondence relating to all their transactions with the State Dispensary, and to require the person or persons in custody or possession of said books, documents, papers and correspondence to produce the same before the said Committee in person, and when such proof has been submitted to and approved by said Committee, and the State

Treasurer is hereby forbidden to pay such claims upon written notice from the Chairman of said Committee." Comparing this statute with the previous Dispensary legislation, it is perfectly obvious this Commission had conferred on it a discretion in the ascertainment and payment of claims against the State (374) from funds in their hands for liquor sold and accounts collected in winding up the State Dispensary at least equal to that which had been conferred on the Directors of the State Dispensary when the State's liquor business was in operation. The previous Dispensary statutes clearly contemplated that the Directors should buy liquor and pay just claims for its price from the proceeds of its sale. Yet we venture to think no court would have entertained for a moment a suit by creditors looking to judicial interference with the discretion of those directors in determining the just debts of the State for purchases of liquor, and to the judicial administration by injunction or receivership of the funds in their hands.

There is not the slightest suggestion in this statute of consent to the submission or the justness of the claims against the State to the adjudication of any court, or to the transference of these public funds to a court for administration. On the contrary, the only method provided in the statute for the separation of the just from the unjust claims was the investigation into them by the Commission itself. The language of the statute plainly contemplated the appointment of a Commission of discreet business men for the purpose of representing to the fullest extent the State, as its officers in closing out its liquor business, in taking charge of its funds, in investigating the conduct of the business with a view of ascertaining and deciding for the State what were just claims and paying them from the funds realized from the business. The extent of the investigation and the degree of proof required were left to the discretion of the Commission. That this was the scope and meaning of the statute is made still more manifest when it is considered that charges of outrageous fraud, not only against the State's officers having charge of its liquor business, but also against those who had sold liquor to the State and were making claims against it, were receiving most anxious consideration by the General Assembly.

(375) The statutes and resolutions passed by the General Assembly which immediately preceded the act providing for the appointment of this Commission show the persistent purpose and well defined public policy to use to the utmost the sovereign power of the State in the investigation of these charges and in separating just from fraudulent claims. The presumption is exceedingly strong against a legislative intention to suddenly abandon this purpose and policy, and strip the State of

its sovereign right to decide for itself what in justice and good faith it was called on to do in respect to the claims against it.

The Statute seems plain in itself, but when viewed in the light of these conditions, we do not see how a doubt can remain that it is to be construed as providing a method of safe-guarding the rights of the State, uncovering frauds against it and providing for the ascertainment, determination and payment of the true debt of the State in the premises, by the Commission who were invested with full responsibility and discretion to the accomplishment of these ends, subject to no interference except that of the General Assembly itself. With this discretion lodged in the Commission, it became the representative of the State with respect to the matter in its charge and a suit brought against it for any purpose was, in effect, a suit against the State. This principle is thus stated in Board of Liquidation *vs.* McComb, 92 U. S., 531, 23 L. Ed., 623: "The objections to proceeding against State Officers by mandamus or injunction are: first, that it is in effect proceeding against the State itself; and, secondly, that it interferes with the official discretion vested in the officers. It is conceded that neither of these things can be done. A state, without its consent, cannot be sued by an individual; and a court cannot substitute its own discretion for that of executive officers, in matters belonging to the proper jurisdiction of the latter. But it has been well settled that when a plain official duty requiring no exercise of discretion is to be performed, and performance is refused, any person who will sustain personal injury by such refusal, may have a man-
(376) damus to compel its performance; and when such duty is threatened to be violated by some positive official act, any person who will sustain personal injury thereby, for which adequate compensation cannot be had at law, may have an injunction to prevent it." After quoting this language with approval in Cunningham *vs.* Macon, etc., R. R. Co., 109 U. S., 446, 27 L. Ed., 995, Justice Miller says: "It is believed that this is as far as this court has gone in granting relief in this class of cases." *Ex parte* Ayers, 123 U. S., 443, 31 L. Ed., 216; Wilson *vs.* Exposition Commission (Iowa), 110 N. W., 1045; Davis *vs.* Mortensen (Neb.), 95 N. W., 831; Cope *vs.* Hastings (Penn.), 38 A., 717; Chemical Co. *vs.* State Board of Agriculture (N. C.), 15 S. E., 1032.

While in Penoyer *vs.* McConnaughy, 140 U. S., 1, 35 L. Ed., 363, it was held the court had jurisdiction to enjoin State officers from sacrificing private rights under an unconstitutional act of a State legislature, yet the court recognized the rule laid down in Board of Liquidation *vs.* McComb, *supra,* that a court has no jurisdiction to entertain a suit to override the discretion vested in State officers by a valid statute.

The Supreme Court of the United States has laid down in a number of cases these propositions, in substance, namely, that a suit may be maintained, (1) to protect private rights by requiring State officers to perform a plain ministerial duty imposed by law; (2) to protect private rights against the wrongs of State officers undertaking to act under statutes void because unconstitutional; and (3) to protect private rights against wrong which State officers may inflict in going beyond the duty imposed on them, or right granted to them by valid State legislation. In all of these cases, the view taken by the court is that the officer cannot claim the protection of State authority, because his violation of private right is due either to his action without any authority of State law, or to his refusal to obey and recognize the State law, and, therefore, in such cases, the State is not behind him. The authorities on this subject are collated in Reagan *vs.* Farmers L. & T. Co., (377) 154 U. S., 363, 38 L. Ed., 1020, in Tyndal *vs.* Wesley, 167 U. S., 204, 42 L. Ed., 137, and other cases.

Under these cases if the State by Statute places a definite sum of money or property in the hands of an officer with the discretion to pay or deliver it to particular persons upon their doing a particular thing, lodging no discretion in the officer, the officer is a naked trustee of the money or other property, and upon the designated persons doing the particular thing required by statute, the duty of the officer to pay over the money or deliver the property is purely ministerial. In failing to discharge the trust by payment or delivery, he does not represent the State, and can claim no protection through it. On the contrary, in such failure he acts in defiance of the State authority, and compliance with the State's mandate may always be enforced by judicial process. Such cases were McKee *vs.* Lamar, 159 U. S., 313, 40 L. Ed., 165, and Rolston *vs.* Crittenden, 120 U. S., 390, 30 L. Ed., 721.

The latter case is mainly relied on to support the jurisdiction of the Federal Court in this matter, but it is entirely different. A statute of Missouri required certain State officers therein named to assign certain liens on Hannibal & St. J. R. R. Company, to certain trustees upon their payment into the State Treasury of a sum of money equal in amount "to all indebtedness due or owing by said company to the State, and all liabilities incurred by the State by reason of having issued on bonds and loan the same to said company as a loan of the credit of the State, together with all interest that has and may at the time when such payment shall be made have accrued and remain unpaid by said company, and such shall have been certified to the Governor of the State by the Treasurer," In making and receiving payment, the trustees and the State offi-

cers differed as to the amount of interest which the statute required to be paid. The dispute was not as to what the officers had the discretion to receive in satisfaction of the obligation to the State, for they had no discretion but as to what under the true construction of the Statute they were required to receive as a pure ministerial duty. On this ground, as will clearly ap- (378) pear from the report of the case, the court entertained a suit to enjoin the enforcement by the officers of what they alleged to be an unpaid debt of the State, which the trustees alleged had been paid as required by statute. The jurisdiction rested on the ground that the State officers could not protect themselves behind the State from being required to perform a ministerial duty which the State by its statute had required of them and which they had refused to perform in opposition to the State's command. Chief Justice Waite thus tersely states the ground of the decision: "It is next contended that this suit cannot be maintained because it is in its effect a suit against the State, which is prohibited by the eleventh amendment of the Constitution of the United States, and Louisiana *vs.* Jumel, 107 U. S., 711 (27, 448), is cited in support of this position. But this case is entirely different from that. There the effort was to compel a state officer to do what a statute prohibited him from doing. Here the suit is to get a State officer to do what a statute requires of him. The litigation is with the officer, not the State. The law makes it his duty to assign the liens in question to the trustees when they make a certain payment. The trustees claim they have made this payment. The officer says they have not and there is no controversy about his duty if they have. The only inquiry is, therefore, as to the fact of a payment according to the requirements of the law. If it has been made, the Trustees are entitled to their decree."

The present case falls clearly within the principle laid down in Louisiana *vs.* Jumel, 107 U. S., 711; 27 L. Ed., 448, and other authorities above cited and is not embraced in the distinction made in the Rolston case. Neither in the latter case nor in any other is the principle questioned that where discretion is conferred on the officer to act for the State in the ascertainment of its debt or in any other matter within its sphere of action, he is responsible to the State alone and a suit against him with respect to such discretion is a suit against the State. (379) We are not careful to inquire whether the discretion lodged in the Commission is the discretion of judicial or executive officers, for the Supreme Court of the United States rests its conclusion that no court can disturb the discretion with which the State has invested its officers or agents upon no such distinction. But, if the distinction be essential, it has been held in numerous cases in this State from Richland *vs.* Miller, 16

S. C., 236, to Lockwood *vs.* Adams, 63 S. C., 191, that the County Board of Commissioners, a Board whose Statutory duty is to investigate and approve claims against the county, in performing this duty, exercises a judicial function. This Dispensary Commission, though having only a temporary existance, is charged by statute with precisely the same duty with respect to claims against the State on account of the Dispensary, and by parity of reasoning their discretion is a judicial discretion and their action with respect to the validity of the claim, judicial action; and we so hold.

The State has a right to lay down any condition, however hard or arbitrary, it may choose with which its creditors must comply as a condition of payment of their demands. No court has a right to abate one jot or tittle of such conditions. There is no ground to say that the creditor shall abide the finding of any person designated by the State to act for it in ascertaining the validity of his claim is an execution to this principle.

Not only was discretion imposed on the Commission in ascertaining the fraudulent and *bona fide* claims against the State, but the State itself has a very large interest in the eight hundred thousand dollars in its hands. The doctrine recognized and applied by the Supreme Court of the United States, and all courts is thus stated by Justice Lamar in Penoyer *vs.* McConnaughy, *surpra*; "The court will look behind and through the nominal parties to the record to ascertain who are the real parties to the suit." In re Ayers, 123 U. S., 443, 31 L. Ed., 216; New Hampshire *vs.* Louisiana, 108 U. S., 76, 27 L. Ed., 656. In this case it is not necessary to look behind the record for the record in the Federal Court and this Court shows beyond dispute the State's interest to be vitally involved in the suits (380) brought in the Federal Court. That interest is not only its obligation as a government to protect itself against fraudulent claims, but the surplus over just debts is to be paid by the Commission into the Treasury of the State for the use of the State. That the State is a necessary party to any suit affecting the funds is self-evident, for surely it is entitled to be heard in the adjudication of what are fraudulent claims against it, and how much surplus is to remain for its use. It is no answer to say the State will not be bound by the proceedings and judgment in the Federal Court, for this court is undertaking to control and dispose of the public funds in the hands of the State officers, and when the funds leave the hands of the State officers and are disposed of under the order of the court, there will be nothing to which any right of the State can attach.

Lastly let it be assumed for the moment, contrary to our conclusion, that the State by the statute of 24th February, 1907,

creating the Commission, did consent that those who held claims against it on account of the Dispensary should have their claims adjudicated by the courts and the State Dispensary assets administered by the courts and applied to the claims so adjudicated. This would not alter the result, for it is obvious that if any such consent was ever given, it was withdrawn by the amendment of 24th February, 1908, wherein it is provided: "That said Commission is hereby declared to possess full powers to pass upon, fix and determine all claims against the State growing out of dealings with the Dispensary. And to pay for the State and all just claims which have been submitted to and determined by it, and no other, out of the assets of the Dispensary, which have or may hereafter be collected by said Dispensary Commission: Provided, That each and every person, firm or corporation presenting a claim or claims to said Commission shall have the right to appeal to the Supreme Court, as in cases at law: Provided further, that notice of intention to appeal shall be served upon said Commission within ten days of rendition of judgment by the said Commission, and the prac-
(381) tice in taking all steps in perfecting the appeal shall conform to the practice in other appeals to the Supreme Court. That no funds arising from the sale of the assets of the former State Dispensary, or from the collection of debts due the Dispensary, or moneys delivered by the State Treasurer to said Commission shall be paid out for any purpose or to any person whatsoever except upon the check of the Chairman of said Commission, countersigned by the Treasurer of the State of South Carolina. And the Treasurer of the State of South Carolina shall countersign such checks as may be presented by the Chairman of said Commission only upon presentation of the same, together with a certificate of said Commission or a majority thereof, which certificate shall show that the said check is issued in payment of some expense provided for by statute, or necessary incident for closing up the affairs of the Dispensary, or for services rendered said Commission in closing up the affairs of said Dispensary, or contracted for in accordance with law by said State Dispensary Commission, or that it is in payment of a claim of a creditor which had been adjudged by said Commission to be due, and upon such adjudication ordered paid."

This amendment in the clearest terms provides an exclusive condition to the recognition and payment of claims against the State on account of the operation of the State Dispensary, namely, that such claims shall be judicially examined and adjudicated by the Commission consent of a State that it may be sued is not a contract and can be repealed or modified at any time at the discretion of the State, even after suit has been commenced; and when the consent to the adjustment of claims

against it by suit is withdrawn by the State, the jurisdiction of the court in which the case is pending is at an end, and the suit falls to the ground. Beers *vs.* Arkansas, 61 U. S., 527, 15 L. Ed., 991; Ex parte Ayers, 123 U. S., 443, 31 L. Ed., 216; Hans *vs.* Louisiana, 134 U. S., 33 L. Ed., 842. It follows, therefore, if the Federal Court had jurisdiction under the original statute, it came to an end upon the enactment of the Statute of 24th February, 1908.

(382) The cases where States have held stock in banks along with others or as sole stockholders are so far apart from this case, that only one remark need be made as to them. In such case the bank is not a department of the State government, as the Dispensary was, but a corporate entity entirely apart from the State. The State has no right whatever to the bank's funds until the bank debts are paid, and it can confer no more right to convert them than can any other stockholder. Therefore any officer of the State undertaking to hold the funds of a bank against the bank or its creditors does so, not in accordance with the law, but in defiance of law. He cannot derive authority from the State for such conversion because the State can have no such authority to confer. Bank *vs.* Babney, 19 Wall. L.; State *vs.* Bank of the State, I. S. C., 63; Curren *vs.* State Bank of Arkansas, 15 How., 302. It may be under the principles which we have stated after the Commission has performed the duty imposed and exercised the discretion conferred by the State by examining into and deciding on the validity of a particular claim, the payment of that claim from the funds in its hands would be a ministerial act which it could be compelled to perform by mandamus or other appropriate remedy. That point is not before us. We hold that the State has not consented that any court should adjudicate the debts set up against it for liquor sold to it, nor has it consented that eight hundred thousand dollars of its public funds held by its fiscal officers shall be administered by any court; and hence the Federal Court had no jurisdiction to pass the order restraining the respondents from paying out such funds. The order of injunction of the Federal Court therefore, affords no legal protecton to the defendants and their return is adjudged insufficient.

The judgment of this court is that the petitioners are entitled to a writ of mandamus from this court requiring the respondents constituting the State Dispensary Commission, to pay from the funds in their hands to the State Treasurer the sum of fifteen thousand dollars for the use of the Attorney-General, as provided by the Statute of the State, approved 24th Feb-
(383) ruary, 1908. It is a well recognized principle however, that the United States Supreme Court itself follows the decision of the State Supreme Court in the construction of State

Constitutions and Statutes, and of course this rule is binding upon the Circuit Court of the United States.

The court will not therefore assume that the construction which it has placed upon the State Constitution and the Statutes in question, will be disregarded by the Federal Court.

The issuing of the peremptory writ of mandamus is therefore left in abeyance until the further order of this court.

A true copy.

[Seal] U. R. BROOKS, Clerk.

Traverse to the Return of the Defendants to the Rule and Order to Show Cause.

(384) Filed March 27th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT,

IN EQUITY.

Wilson Distilling Company et al., Complainants,
vs.
W. J. Murray et al., Defendants.

Traverse to the Return of the Defendants to the Rule and Order to Show Cause Herein.

And now come the Wilson Distilling Company and others, complainants herein, and travers the return of the defendants herein:

1.

They deny each and every allegation in said return contained not specifically admitted in the amended and supplemental bill of complaint of the complainants heretofore filed and made a part of the motion herein; and by way of further traverse to said return these complainants allege that the Act of the General Assembly of the State of South Carolina, entitled "An Act to provide for the Disposition of all property connected with the State Dispensary, and to wind up its affairs," approved on the 16th day of February, 1907, and set out in full in the sixth paragraph of complainants said amended and supplemental bill of complaint, created a trust for the specific purpose of paying all the just liabilities of the said State Dis-

pensary; that said defendants constituting the State Dispensary Commission duly accepted said trust, as trustees, and your orators and the other creditors of said State Dispensary duly accepted the benefits of said trust, as *cestuis que trust;* and complainants further show that, as they are advised and verily believe, said Act, and the acceptance by the defendants constituting the State Dispensary Commission, as trustees, of the trust created by said Act, and the acceptance by the complainants and the other creditors of said State Dispensary, as *cestuis que trust,* of the benefits of the trust so created, constituted a valid, binding and irrepealable contract within the meaning and pro-
(385) tection of the Constitution of the United States, and of Article 1, section 10, thereof, the protection whereof is hereby expressly claimed by your orators.

2.

Complainants further show that they are informed, advised and believe, and so aver the fact to be, that the Act of the General Assembly of said State entitled, "An Act to Annual an Act Entitled and Act to Provide for the Disposition of All Property Connected with the State Dispensary, and To Wind Up Its Affairs," So as To Provide Compensation for Members of the Said Commission for the Year 1908, and To Provide for the Sale of the Real Estate Heretofore used in Conducting the Dispensary, and To Further Provide for Winding Up the Affairs of the State Dispensary," Approved on the 24th of February, 1908, and being the same referred to and set out in whole or in part in the return of the defendants to the order and to rule to show cause herein, is unconstitutional, null and void, for that the same conflicts with Article 1, section 10, of the Constitution of the United States, and with Article XIV., section 1, of the Amendments thereof, and for that the same impairs and attempts to impair the obligation of the contract set out in the last preceding paragraph hereof, and deprives and attempts to deprive the complainants of their property without due process of law, and denies and attempts to deny to them the equal protection of the law, in violation of the aforesaid provisions of the Constitution of the United States; and your complainants hereby expressly claim their rights under, and invoke the protection of said constitutional provisions.

T. MOULTRIE MORDECAI,
FRANK CARTER and
H. C. CHEDESTER,
Solicitors for Complainants.

STATE OF NORTH CAROLINA,
County of Buncombe.

(386) T. Moultrie Mordecai, being sworn, says:

That he is one of the solicitors for the complainants in the above entitled suit, and that he verifies this traverse on behalf of said complainants; that said verification is made by this affiant for the reason that the corporate complainants are foreign corporations, and that no officer or agent of said corporations, or either of them, capable of making the said verification is present within the District of South Carolina, or at the place where said traverse was prepared, to the knowledge or belief of this affiant, and that none of the complainants who are natural persons are, and neither of said complainants is, present within said District of South Carolina, or at the place where said traverse was prepared, to the knowledge or belief of this affiant; and affiant further says that the foregoing traverse is true of his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters he believes it to be true.

T. MOULTRIE MORDECAI.

Sworn to and subscribed before me this the 27th day of March, 1908.

GILMER WELCH,

[Seal] Notary Public, Buncombe County, North Carolina.

Opinion on Motion to Vacate Injunction and Receivership Orders.

(387) Filed March 27th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT,

IN EQUITY.

The Fleischmann Company, Complainant,
vs.
W. J. Murray et al., Defendants.
and
Wilson Distilling Company et al., Complainants,
vs.
W. J. Murray et al., Defendants.

This is a motion to vacate injunction and receivership orders on the ground that they are predicated upon an interpre-

tation of the Act of 1907 as amended by the Legislature of 1908, in conflict with the interpretation thereof by the Supreme Court of South Carolina, in the case of The State of South Carolina, ex rel J. Fraser Lyon, as Attorney General, petitioner, *vs.* W. J. Murray et al., decided March 14, 1908.

As a general rule, this court will adopt the construction which the State Court puts upon a State statute. This is especially true as affecting the court's decision in respect to a rule of property.

The questions involved in this motion were determined by this court in an opinion rendered on the 29th day of February, 1908, in which, among other things, it was held that the act authorizing the appointment of the defendants as Commissioners to settle and adjust the outstanding indebtedness incurred by the State Dispensary created the fund in their hands a trust fund for the benefit of the complainants, and that the acceptance of the same by the defendants constituted them trustees holding such fund for the purpose contemplated by the statute.

The court having considered the opinion of the Supreme Court of South Carolina, which holds that this is a suit against (388) the State and therefore inhibited by the eleventh amendment, is of opinion that this court is not bound by the principles enunciated therein, inasmuch as it was rendered subsequent to the decision of this court and necessarily involves a construction of the Constitution of the United States.

In the case of Burgess *vs.* Seligman, 107 U. S., page 33, among other things the court says:

"We do not consider ourselves bound to follow the decision of the State court in this case. When the transactions in controversy occurred, and when the case was under the consideration of the Circuit Court, no construction of the statute had been given by the State tribunals contrary to that given by the Circuit Court. The Federal courts, co-ordinate with, and not subordinate to, that of the State courts, and are bound to exercise their own judgment as to the meaning and effect of those laws. * * * So when contracts and transactions have been entered into, and rights have accrued thereon under a particular state of the decisions, or when there has been no decision, of the State tribunals, the Federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State courts after such rights have accrued." * * *

"In the present case, as already observed, when the transactions in question took place, and when the decision of the Circuit Court was rendered, not only was there no settled con-

struction of the statute on the point under consideration, but the Missouri cases referred to arose upon the identical transactions which the Circuit Court was called upon, and which we are now called upon, to consider. It can hardly be contended that the Federal court was to wait for the State courts to decide the merits of the controversy and then simply register their decision; or that the judgment of the Circuit Court should be reversed merely because the State court has since adopted a different view."

Also, in the case of Pease *v.* Peck, 18 Rw., 599, the court says:

"When the decisions of the State court are not consistent, (389) we do not fell bound to follow the last, if it is contrary to our own convictions—and much more is this the case, where, after a long course of consistant decisions, some new light suddenly springs up, or an excited public opinion has elicited new doctrines, subversive of former safe precedent. Cases may exist also, when a cause is got up in a State court for the very purpose of anticipating our decision of a question known to be pending in this court. Nor do we fell bound in any case in which a point is first raised in the courts of the United States, and has been decided in a Circuit Court, to reverse that decision contrary to our own convictions, in order to conform to a State decision made in the meantime. Such decisions have not the character of established precedent declarative of the settled law of a State."

This court entertains the highest regard for the Supreme Court of South Carolina, and the greatest respect for its decisions, but inasmuch as its decision in this case was rendered after the rights of the complainants had accrued under the act, and subsequent to a determination by this court of the questions involved in a suit brought by the complainants, the court does not feel justified in adopting the opinion of that court as controlling in this particular case.

If the court had any doubt as to the correctness of its ruling, it would gladly yield to the decision of the State court, but having no such doubt, the motion of defendant is overruled.

At the time the court announced its opinion in this case, among other things, the court stated that if application should be made for the payment of the $15,000 appropriated by the Legislature for the State of South Carolina for the prosecution of parties charged with violation of law in connection with the management of the State Dispensary, that it would gladly authorize the same.

Inasmuch as it appears there will be funds amply sufficient to pay all debts and liabilities of the Commission after the payment of this amount, and in order that the State may not be embarrassed in its prosecution of those who may have violated its laws, the court will, of its own motion, sign an order authorizing the payment of the said amount to the Attorney General.

Order Dismissing Motion to Revoke Former Orders of Court Granting Injunctions and Appointing Receivers.

(390) Filed 27th day March, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT,
IN EQUITY.

The Wilson Distilling Company et al.
vs.
W. J. Murray and others.
and
The Fleischmann Company
vs.
W. J. Murray and others.

Order Dismissing Motion.

This cause came on to be heard this day upon the motion of the defendants to set aside and revoke the former orders of this court granting injunctions and appointing receivers, and to dismiss this suit in accordance with the decision of the Supreme Court of the State of South Carolina, and, having been heard, and the court being of the opinion that it is not bound by said decision of said Supreme Court, and that the former orders of this court ought not to be set aside or revoked, and that this cause ought not to be dismissed:

It is now, on motion of counsel for complainants, ordered, adjudged and decreed that the motion of the defendants be, and the same is, hereby, denied with costs.

This March 27th, 1908.

J. C. PRITCHARD,
U. S. Circuit Judge.

Order Granting Leave to Amend Bill and Amended Bill.

(391) Filed March 27th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT.

IN EQUITY.

Wilson Distilling Company et al., Complainants,
vs.
W. J. Murray et al., Defendants.
and
The Fleischmann Company, Complainant,
vs.
W. J. Murray et al., Defendants.
} Order.

On motion of the complainants in the first of the above entitled consolidated causes, it is ordered that said complainants have leave to amend their bill and amended bill of complaint herein.

This the 26th day of March, 1908.

J. C. PRITCHARD,
U. S. Circuit Judge.

Amendment to Bill and Amended Bill.

(392) Filed March 27th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT,

IN EQUITY.

Wilson Distilling Company et al., Complainants,
vs.
W. J. Murray et al., Defendants.
and
The Fleischmann Company, Complainant,
vs.
W. J. Murray et al., Defendants.
} Consolidated Causes.

Amendment to Bill and Amended Bill of Complaint.

To the Honorable the Judges of the Circuit Court of the United States for the District of South Carolina:

The complainants in the first of the above entitled consolidated causes, by leave of the court, amend their bill and amended

and supplemental bill of complaint heretofore filed herein, as follows, that is to say:

1.

Your orators show unto your honors, as they have heretofore shown, that the Act of the General Assembly of the State of South Carolina, entitled "An Act to provide for the Disposition of all Property connected with the State Dispensary, and to wind up its affairs," approved on the 16th day of February, 1907, and set out in full in the sixth paragraph of said amended and supplemental bill of complaint, created a trust for the specific purpose of paying all the just liabilities of the said State Dispensary; that said defendants constituting the State (393) Dispensary Commission duly accepted said trust, as trustees, and your orators and the other creditors of said State Dispensary duly accepted the benefits of said trust, as *cestuis que trust;* and your orators further show that, as they are advised and verily believe, said Act, and the acceptance by the defendants constituting the State Dispensary Commission, as trustees, of the trust created by said Act, and the acceptance by the complainants and the other creditors of said State Dispensary, as *cestuis que trust,* of the benefits of the trust so created, constituted a valid, binding and irrepealable contract within the meaning and protection of the Constitution of the United States, and of Articles 1, section 10, thereof, the protection whereof is hereby expressly claimed by your orators.

2.

And your orators further show that they are informed, advised and believe, and so aver the fact to be, that the Act of the General Assembly of said State entitled "An Act to Amend an Act Entitled 'An Act To Provide for the Disposition of All Property Connected With the State Dispensary, and To Wind Up Its Affairs,' So as To Provide Compensation for Members of the Said Commission for the Year 1908, and To Provide for the Sale of the Real Estate Heretofore Used in Conducting the Dispensary, and To Further Provide for Winding Up the Affairs of the State Dispensary," Approved on the 24th day of February, 1908, and being the same referred to and set out in whole or in part in the return of the defendants to the order and rule to show cause herein, is unconstitutional, null and void, for that the same conflicts with Article 1, section 10, of the Constitution of the United States, and with Article XIV., section 1, of the Amendments thereof, and for that same impairs and attempts to impair the obligation of the contract

set out in the last preceding paragraph hereof, and deprives and attempts to deprive the complainants of their property without due process of law, and denies and attempts to deny to them the equal protection of the law, in violation of the aforesaid provisions of the Constitution of the United States; and your orators hereby expressly claim their rights under and invoke the protection of said constitutional provisions.

3.

(394) And your orators further show, that they are informed and believe and so aver the fact to be, that during the pendency of this cause and since the announcement by this court of its judgment and opinion to the effect that this court has jurisdiction in these causes, the Honorable J. Fraser Lyon, Attorney-General of the State of South Carolina, representing the defendants W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, constituting the State Dispensary Commission in these causes, caused and procured to be instituted an action or proceeding against them the said defendants in the Supreme Court of the State of South Carolina, by and in the name of the State of South Carolina on the relation of the said the Honorable J. Fraser Lyon, Attorney-General of the State of South Carolina, as aforesaid, and the defence of the said action or proceeding in said Supreme Court of South Carolina was committed by the defendants last above named to the Honorable William F. Stevenson, one of the counsel of record representing the defendants in the above entitled causes in this court (he having been appointed as such counsel with the approval of the said the Honorable J. Fraser Lyon, Attorney-General of the State of South Carolina), and to other counsel representing the said defendants in these causes, including the Honorable J. Fraser Lyon, Attorney-General of said State of South Carolina; the action or proceeding so instituted having for its alleged object the granting by said Supreme Court of South Carolina of a mandamus requiring the said defendants to pay over to the said Attorney-General out of the trust fund created by said Act of 1907 the sum of fifteen thousand dollars appropriated, or attempted to be appropriated, by the General Assembly of said State out of said fund for the use of said Attorney-General, by an act of said General Assembly approved subsequently to the institution of those actions, and these complainants aver that both the Honorable J. Fraser Lyon, the Attorney-General of the State of South Carolina, and the Honorable W. F. Stevenson the counsel of the defendants in these causes either knew, or had good reason to believe, that (395) such an action or proceeding was not necessary for the

purpose of rendering said appropriation available, and that there would have been no objection made by any party to these causes or either of them to an order of this court releasing the said sum from the operation of the injunctions theretofore issued by this court, as had previously been done in another instance, at their request and upon their own motion, without objection, as will appear by reference to the record in these causes, and that the object and purpose of the institution of said action or proceeding in the Supreme Court of South Carolina was to hinder, delay and defeat the enforcement by this court of the trust created by the said Act of 1907, and the administration of said trust by this court in the above entitled action. And your orators therefore pray as they have heretofore prayed, etc.

T. MOULTRIE MORDECAI,
FRANK CARTER &
H. C. CHEDESTER,
Solicitors for Complainants.

STATE OF NORTH CAROLINA,
County of Buncombe.

(396) Frank Carter, being sworn, says:

That he is one of the solicitors for the complainants in the above entitled suit, and that he verifies this amendment to the bill and amended bill of complaint herein on behalf of said complainants that said verification is made by this affiant for the reason that the corporate complainants are foreign corporations, and that no officer or agent of said corporations, or either of them, capable of making the said verification is present within the District of South Carolina, or at the place where said amendment was prepared, to the knowledge or belief of this affiant, and that none of the complainants who are natural persons are, and neither of said complainants is present within said District of South Carolina, or at the place where said amendment was prepared, to the knowledge or belief of this affiant; and affiant further says that the foregoing amendment to said bill and amended bill of complaint is true of his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters he believes it to be true.

FRANK CARTER.

Sworn to and subscribed before me this the 26th day of March, 1908.

EUGENE WAY,
Notary Public, Buncombe County,
North Carolina.
Com. expiring Feb. 24th, 1909.

[Seal]

Order Revoking Order Requiring Defendants to Answer on Rules Day in April.

(397) Filed 27th day of March, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA. IN EQUITY.

Wilson Distilling Company et al.
vs.
W. J. Murray et al.
and
Fleischmann Company et al.
vs.
W. J. Murray et al.

Consolidated Causes.

The plaintiffs having this day amended their bill of complaint:

Ordered by the court that the order hitherto made requiring the defendants to demur plead or answer at the April Rules day be revoked and that the said defendants be required to demur, plead or answer at the next May Rules day.

This March 27th, 1908.

J. C. PRITCHARD,
U. S. Circuit Judge.

Order to Pay Attorney General of South Carolina $15,000 Upon Application Therefor.

(398) Filed 27th day of March, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT,

IN EQUITY.

The Fleischmann Company
vs.
W. J. Murray et al.
and
Wilson Distilling Company
vs.
W. J. Murray et al.

In accordance with the opinion of the court filed herein on this date, it is

Ordered by the court, on its own motion, that the defendants herein pay to the Attorney-General of South Carolina the sum of $15,000, upon his application therefor, and the former orders of this court are hereby modified to the extent necessary to permit such payment.

Let a copy of this order be certified to the defendants severally.

This March 27th, 1908.

J. C. PRITCHARD,
U. S. Circuit Judge.

Summons and Severance.

(399) Filed March 27th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA. IN EQUITY.

The Wilson Distilling Company and others
vs.
W. J. Murray et al.

The Fleischmann Company
vs.
W. J. Murray et al.

Consolidated Causes.

Summons and Severance.

To all the defendants in the above stated causes, or either of them except the undersigned:

You and each of you are hereby invited to join with the undersigned defendants on or before the 25th day of March,

1908, to prosecute an appeal to the United States Circuit Court of Appeals for the Fourth Circuit, to reverse two interlocutory orders made in the above stated causes at Chambers, by the Honorable Jeter C. Pritchard, Circuit Judge of the Fourth Judicial Circuit of the United States, as follows:

An order in the second of the above entitled causes, of date the 29th day of February, 1908, continuing the temporary restraining order theretofore granted therein and granting an injunction pendente lite.

An order in both of the above entitled causes of date the 7th day of March, 1908, granting an injunction pendente lite and appointing receivers.

Or you will be deemed to have acquisced in said orders and the undersigned will prosecute said appeal without joining you as a party, and on Friday, March 27th, 1908, at 10 o'clock A. M., or as soon thereafter as counsel can be heard, will apply to the Honorable Jeter C. Pritchard, Circuit Judge of the Fourth Judicial Circuit, at his Chambers, at Asheville, N. C., (400) for an order of severance.

W. J. MURRAY,
JOHN McSWEEN,
AVERY PATTON.

As constituting the "State Dispensary Commission" and individually, Defendants.

March 20th, 1908.

Personally comes W. F. Stevenson, who, on oath, says he mailed by registered mail prepaid copies of the within notice to the below named defendants, on March 20th, 1908, to their respective addresses as coming from J. Fraser Lyon, Atty. Genl., and that the other defendants have all agreed in writing or by their attorneys at law to join in said appeal and authorized their names to be embraced in said petition.

W. F. STEVENSON.

Sworn to before me this March 20th, 1908.

E. B. WILSON,
Not. Public for S. C.

Farmers & Merchants Bank, Walterboro, S. C.
B. F. Arthur, Union, S. C.
C. K. Henderson, Aiken, S. C.

Piedmont Savings and Investment Company, Greenville, S. C.
The Peoples Bank of Union.
The Bank of Aiken.
The Bank of Hartsville.
The Commercial and Savings Bank, Florence, S. C.
The Farmers & Merchants Bank, Anderson, S. C.
The Merchants & Planters Bank, Gaffneys, S. C.
The Bank of Dillon.
The Central National Bank, Spartansburg.
The Enterprise Bank, Charleston.
The First National Bank, Spartansburg.
The Merchants and Farmers Bank, Spartansburg.
The City National Bank, Greenville, S. C.
(401) The People National Bank, Charleston.
The Lexington Savings Bank, Lexington.
The Greenville Savings and Trust Co., Greenville.
Norwood National Bank, Greenville.
The People Savings Bank, Abbeville.
Commercial Bank of Camden.
National Exchange Bank, Chester.
The Bank of Orangeburg.
The People Loan and Exchange Bank, Laurens.
The Bank of Charleston.
The Bank of Aiken.

Affidavit of W. J. Murray.

(402) Filed March 27th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA. IN EQUITY.

The Wilson Distilling Company and others
vs.
W. J. Murray et al.

The Fleischmann Company
vs.
W. J. Murray et al.

} Consolidated Causes.

SOUTH CAROLINA, }
Richland County, } *ss:*

W. J. Murray, being duly sworn, says that the "Summons and Severance" herein, a copy of which is hereto attached having been duly served on March 20, 1908, by registered mail on

the defendants B. F. Arthur, C. K. Henderson, The Bank of Aiken, of Aiken, South Carolina, The Peoples Bank of Union, of Union, South Carolina, The Piedmont Savings and Investment Company, of Greenville, South Carolina, The Merchants and Farmers Bank of Spartanburg, of Spartanburg, South Carolina, as appears by the affidavit of mailing of W. F. Stevenson on file herein and the post-office registry receipts and registry return receipts in the possession of counsel for the defendant, the State Dispensary Commission.

The said defendants, The Bank of Aiken, of Aiken, South Carolina, and The Merchants and Farmers Bank of Spartanburg, South Carolina, have responded thereto declining to join in the said appeal while the other defendants named above as having been served with said Summons and Severance have failed to make any response thereto whatever.

(403) W. J. MURRAY.

Sworn to before me this 26th day of March, 1908.

T. H. MEIGHAN,
[Seal] Notary Public for South Carolia.

(404)

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA. IN EQUITY.

The Wilson Distilling Company and others
vs.
W. J. Murray et al.

The Fleischmann Company
vs.
W. J. Murray et al.

} Consolidated Causes.

Summons and Severance.

To all the defendants in the above stated causes, or either of them, except the undersigned:

You and each of you are hereby invited to join with the undersigned defendants on or before the 25th day of March, 1908, to prosecute an appeal to the United States Circuit Court of Appeals for the Fourth Circuit, to reverse two interlocutory orders made in the above stated causes at Chambers, by the Honorable Jeter C. Pritchard, Circuit Judge of the Fourth Judicial Circuit of the United States, as follows:

An order in the second of the above entitled causes, of date the 29th day of February, 1908, continuing the temporary restraining order theretofore granted therein and granting an injunction pendente lite.

An order in both of the above entitled causes of date the 7th day of March, 1908, granting an injunction pendente lite and appointing receivers.

Or you will be deemed to have acquiesced in said orders and the undersigned will prosecute said appeal without joining you as a party, and on Friday, March 27th, 1908, at 10 o'clock A. M., or as soon thereafter as counsel can be heard, will apply to the Honorable Jeter C. Pritchard, Circuit Judge of the Fourth Judicial Circuit, at his Chambers, at Asheville, N. C.,
(405) for an order of severance.

W. J. MURRAY,
JOHN McSWEEN,
AVERY PATTON,
As constituting the "State Dispensary Commission"
and individually, Defendants.

March 20th, 1908.

Petition for Allowance of Appeal.

(406) Filed March 27th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

Wilson Distilling Company and others *vs.* W. J. Murray et al. The Fleischmann Company *vs.* W. J. Murray et al.	Consolidated Causes.

Petition for Allowance of Appeal.

The State Dispensary Commission of South Carolina and W. J. Murray, John McSween and Avery Patton, constituting said Commission (C. K. Henderson and B. F. Arthur having resigned as Commissioners and their offices still being vacant); and W. J. Murray, John McSween and Avery Patton, as individuals, and all the other defendants in said causes, or either of them, except B. F. Arthur, C. K. Henderson, The Bank of

Aiken, of Aiken South Carolina, The Peoples Bank of Union, of Union, South Carolina, The Piedmont Savings and Investment Company, of Greenville, South Carolina, and the Merchants and Farmers Bank of Spartanburg, of Spartanburg, South Carolina, who, after due summons and notice, have failed and refused to join in this appeal, conceiving themselves to be aggrieved by the interlocutory order made and entered in the above cause of The Fleischmann Company, complainant, *vs.* W. J. Murray et al., defendants, in the above entitled court, on the twenty-ninth day of February, 1908, and also by the interlocutory order made and entered in the above entitled cause of Wilson Distilling Company et al. *vs.* W. J. Murray and others, and the Fleischmann Company *vs.* W. J. Murray and others—consolidated causes—in the above entitled court, on the seventh day of March, 1908, wherein and whereby it was ordered and decreed in the cause of the Fleischmann Company, complainant, *vs.* W. J. Murray et al., defendants, that the temporary restraining order heretofore issued in said cause on the twenty-second day of January, 1908, be and the same is hereby continued in full force and effect until the final determination (407) of said suit, or until the further order of this court, and that the defendants and each of them, their agents, attorneys and employees, be restrained and ejoined from interfering with, paying out or transferring to any person, or persons whomsoever, or in any way disturbing or changing the present status of the fund now in their possession and control, or from taking any steps with reference to said fund tending to or which may put the same beyond the jurisdiction of this court, and directing that an injunction pendente lite issue in accordance with said order, and wherein and whereby it was ordered and decreed in said cause of The Wilson Distilling Company et al. *vs.* W. J. Murray and others, and The Fleischmann Company *vs.* W. J. Murray and others—consolidated causes—that the temporary restraining order heretofore issued in the first entitled cause be and the same is hereby continued in full force and effect until the final determination of said suit, or until the further order of this court, and that the defendants, and each of them, their agents, attorneys and employees, be restrained and enjoined from interfering with, paying out or transferring to any person, or persons whomsoever, or in any way disturbing or changing the present status of the fund now in their possession and control, except to transfer, pay over and deliver same to the receivers named in this order; and further ordering and decreeing that Joseph A. McCullough, C. K. Henderson and B. F. Arthur be appointed receivers of this court for the purpose of holding and administering the trust fund now in the hands of the defendants and authorizing said receivers to take immediate

possession of all and singular, the money, funds, property, rights, credits and assets described in said cause; and further ordering and decreeing that the defendants and each of them be required and commanded to pay over and deliver to said receivers upon demand made by them, all of said moneys, funds, property, rights, credits or assets, or any part of the same, and all other property of the defendants of whatever kind or character, which the defendants constituting the State Dispensary Commission now have in their possession or under their control (408) by virtue of the Act of the General Assembly of the State of South Carolina, passed at its session held in 1907, creating the said State Dispensary Commission; and further ordering and decreeing that all of the parties to this cause and all other persons whomsoever, their agents and attorneys, be restrained and enjoined from interfering in any way with the receivers hereby appointed, or with their possession and control of the money and other property hereby ordered to be transferred to them, by which interlocutory orders the restraining order was continued and the complainants were awarded a preliminary injunction against the defendants and by which receivers were appointed, hereby petition said court for an order allowing these defendants, and each of them, to prosecute an appeal from said interlocutory orders continuing the restraining order heretofore granted and granting preliminary injunctions and appointing receivers, and from each of said orders, to the United States Circuit Court of Appeals for the Fourth Circuit, under and according to the laws of the United States in that behalf made and provided.

And your petitioners further pray that a transcript of the records, papers and proceedings upon which said orders were made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fourth Circuit.

And your petitioners will ever pray, &c.

J. FRASER LYON,
ABNEY & MULLER,
STEVENSON & MATHESSON,
ANDERSON, FELDER, ROUNDTREE & WILSON,
Solicitors for Petitioners.

March 27th, 1908.

Assignment of Errors.

(409) Filed March 27th, 1908.

THE UNITED STATES OF AMERICA, DISTRICT OF SOUTH CAROLINA, IN THE CIRCUIT COURT, FOURTH CIRCUIT.

IN EQUITY.

Wilson Distilling Company and others
vs.
W. J. Murray and others.
and
The Fleischmann Company
vs.
W. J. Murray and others.

Consolidated Causes.

Assignment of Errors.

The State Dispensary Commission of South Carolina, and W. J. Murray, John McSween and Avery Patton, constituting said Commission (C. K. Henderson and B. F. Arthur having resigned as Commissioners and their office still being vacant); and W. J. Murray, John McSween and Avery Patton as individuals, and all the other defendants in said causes, or either of them, except B. F. Arthur, C. K. Henderson, The Bank of Aiken, of Aiken, South Carolina, The Peoples Bank of Union, of Union, South Carolina, The Piedmont Savings and Investment Company of Greenville, South Carolina, The Merchants and Farmers Bank of Spartanburg, of Spartanburg, South Carolina.

Who, after due summons and notice, have failed and refused to join in this appeal, file the following assignments of error upon which they and each of them will reply upon their appeal from the interlocutory orders made in the above stated causes at Chambers by the Honorable Jeter C. Pritchard, Circuit Judge of the Fourth Judicial Circuit of the United States, as follows:

An order in the said case of The Fleischmann Company *vs.* W. J. Murray et al., of date of the 29th day of February, 1908, continuing the temporary restraining order theretofore granted,
(410) and granting an injunction in said cause.

An order in the two above entitled consolidated causes of date the 7th day of March, 1908, continuing the said temporary restraining order and granting an injunction and appointing receivers in said two consolidated causes.

These defendants assign as error upon this appeal the following, viz.:

FIRST ASSIGNMENT OF ERROR.

The Honorable Circuit Judge above named erred in making the said interlocutory orders, to-wit, the said interlocutory order continuing the temporary restraining order and granting an injunction, and the said interlocutory order continuing the restraining order, granting an injunction and appointing receivers.

(a)

Because the complainants by and in their bills of complaint have not stated such causes as do or ought to entitle them to the relief provided for therein or to the said orders granting injunctions and appointing receivers.

(b)

Because these suits are, and on the face of the complainants' bills and on all the other pleadings, proceedings, and affidavits herein, appear to be, in effect suits against the State of South Carolina whereas the said State has not consented to be impleaded in said suits, and whereas under the Eleventh Amendment to the Constitution of the United States the jurisdiction of this Honorable Court does not extend thereto.

(c)

Because the State of South Carolina is, and on the face of complainants' bills and on all the other pleadings, proceedings and affidavits herein, appears to be, and indispensable party to said suits, whereas the said State has not consented to be made a party thereto, and whereas under the Eleventh Amendment to the Constitution of the United States the said State cannot (411) be made a party thereto without her consent.

(d)

Because the defendants as the State Dispensary Commission under the Act of the General Assembly of the State of South Carolina creating the same, entitled "An Act to, provide

for the disposition of all property connected with the State Dispensary, and to wind up its affairs," approved February 16th, 1907, and the Acts Amendatory thereto constitute a court of the State of South Carolina within the meaning of Section 720 of the Revised Statutes of the United States which declare that:

"The writ of injunction shall not be granted by any Court of the United States to stay proceedings in any Court of a State except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

(e)

Because the bills of the complainants are multifarious as to parties, in that in each of said bills the complainants are without a common interest in the subject of litigation, have no connection with each other, and are seeking thereby each for itself for the collection of its own alleged separate and distinct claim and the protection of its own alleged separate and distinct interest.

(f)

Because in the case of each of said bills it appears on the face thereof that it sets forth no ground for equitable jurisdiction such as insolvency or otherwise upon which the jurisdiction in equity of this Honorable Court can attach.

(g)

Because the said funds in the hands of these defendants belong to and are subject to the disposition of the State of South Carolina, and are not, as the Circuit Judge appears to have considered a special trust fund impressed with a trust in favor of complainants and other creditors of the State of South Carolina in connection with the said State Dispensary.

(412) (h)

Because the said orders were improvidently made, in that neither the bills of complainants nor the said bills with the other pleadings, proceedings and affidavits herein state or make out a proper or sufficient case for the granting of an injunction or the appointment of a receiver in said causes or either of them.

SECOND ASSIGNMENT OF ERROR.

For the reasons stated in the first assignment of error, as well as others, his honor in and by said orders erred in continuing the temporary restraining order theretofore granted.

THIRD ASSIGNMENT OF ERROR.

For the reasons stated in the first assignment of error as well as others, his honor in and by said orders erred in granting said injunctions.

FOURTH ASSIGNMENT OF ERROR.

For the reasons stated in the first assignment of error, as well as others, his honor, in and by said order in the two consolidated causes, erred in appointing said receivers.

FIFTH ASSIGNMENT OF ERROR.

For the reason stated in the first assignment of error, as well as others, his honor erred in assuming jurisdiction of said causes and in making any order or orders therein.

SIXTH ASSIGNMENT OF ERROR.

The Honorable Circuit Judge further erred as follows:

(a) In holding that the State of South Carolina in the establishment and conduct of its said State Dispensary was not performing one of the functions pertaining to the State in its governmental relations.

(b) In holding that said State could not engage in and conduct the business of its State Dispensary under the Acts of its Legislature authorizing the same without losing its im-
(413) munity from suit as conferred by the Eleventh Amendment to the Federal Constitution in regard to transactions connected with such business.

In order that the foregoing assignment of errors may be and appear of record these defendants present the same to the court and pray that such disposition to be made thereof in accordance with law and the statutes of the United States in such cases made and provided.

And upon said assignment of errors these defendants pray that said interlocutory orders may be reversed.

All of which is respectfully submitted.

J. FRASER LYON,
ABNEY & MULLER,
STEVENSON & MATHESSON,
ANDERSON, FELDER, ROUNDTREE & WILSON,
Solicitors for the Appealing Defendants.

March 27th, 1908.

Order Allowing an Appeal and Severance.

(414) Filed March 27th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA. IN EQUITY.

The Wilson Distilling Company and others
vs.
W. J. Murray et al.

The Fleischmann Company
vs.
W. J. Murray et al.

} Consolidated Causes.

Order Allowing an Appeal and Severance.

This day came the State Dispensary Commission of South Carolina, and W. J. Murray, John McSween and Avery Patton, constituting said Commission (C. K. Henderson & B. F. Arthur having resigned as Commissioners and their office still being vacant); and W. J. Murray, John McSween and Avery Patton as individuals, and all the other defendants in said causes, or either of them, except B. F. Arthur, C. K. Henderson, The Bank of Aiken, of Aiken, South Carolina, The People Bank of Union, of Union, South Carolina, The Piedmont Savings and Investment Company of Greenville, South Carolina, and The Merchants and Farmers Bank of Spartanburg, of Spartanburg, South Carolina (who it appears, after due summons and notice, have failed and refused to join in said appeal); and presented their petition for an appeal herein and an assignment of errors accompanying the same which petition upon consideration is hereby granted and the appeal therein prayed for is hereby allowed from said interlocutory order to the United States Cir-

cuit Court of Appeals for the Fourth Circuit, and the said defendants presenting said petition and assignment of error accompanying the same, are hereby granted their several appeals as aforesaid and their interests are severed in said appeal from the other defendants in said causes, or either of them.

This March 27th, 1908.

J. C. PRITCHARD,
U. S. Circuit Judge.

Bond on Appeal.

(415) Filed March 27th, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA. IN EQUITY.

The Wilson Distilling Company and others *vs.* W. J. Murray et al. The Fleischmann Company *vs.* W. J. Murray et al.	Consolidated Causes.

Know all men by these presents, that we, the State Dispensary Commission and W. J. Murray, as principals, and The United States Fidelity and Guaranty Company of Baltimore, Md., as surety, are jointly and severally held and bound unto the Wilson Distilling Company, and The Fleischmann Company and other complainants in the above entitled consolidated causes or either of them in the sum of one thousand dollars ($1,000), lawful money of the United States of America, to be paid to the said complainants, this successors, executors or administrators for which payment well and truly to be made we bind ourselves, our successors, heirs, executors, administrators and assigns, jointly and severally firmly by these presents.

Sealed with our seals and dated the 27th day of March, 1908.

The condition of the above obligation is such, that, whereas the said W. J. Murray and John McSween and Avery Patton constituting the State Dispensary Commission and as individuals and other defendants with them as indicated in the petition for appeal herein have taken an appeal to the Circuit Court of Appeals for the Fourth Circuit to reverse and correct two interlocutory orders rendered by the Honorable Jeter C. Pritchard, Circuit Judge, in the two above entitled cause as follows:

An order in the said case of The Fleischmann Company *vs.* W. J. Murray et al., of date the 29th day of February, 1908. (416) An order in the two above entitled consolidated causes of date the 7th day of March, 1908.

As indicated in said petition for appeal.

Now the condition of the above obligation is such that if the above mentioned appealing defendants shall prosecute said appeal to effect, and answer all costs, if they shall fail to make good their plea, then this obligation to be void, otherwise to remain in full force and effect.

STATE DISPENSARY COMMISSION, [L. S.]
By W. J. MURRAY, Chairman.
W. J. MURRAY, [L. S.]
THE UNITED STATES FIDELITY &
GUARANTY CO. OF BALTIMORE, MD., [Seal]
ROBT. MOORMAN, Attorney in fact.
J. A. BOLLIN, Attorney in fact.

The within bond is hereby approved this 27th day of March, 1908.

J. C. PRITCHARD,
U. S. Circuit Judge.

Citation.

(417)
UNITED STATES OF AMERICA, } *ss:*

The President of the United States to Wilson Distilling Company, Anheuser-Busch Brewing Association, and Charles J. Gallagher, Jr., and Edward Burton, partners as Gallagher & Burton, and John M. Cranston, trading as Jack Cranston Company, and to The Fleischmann Company, and to Big Springs Distilling Company, a corporation of Savannah, Georgia, Ullman and Company of Cincinnati, Ohio, Anchor Distilling Company of Cincinnati, Ohio, Belair Distilling Company, Richard and Company, D. Sachs and Sons, New York and Kentucky Company, of Rochester, New York, and Garrett & Company:

Your are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Fourth Circuit to be holden at Richmond, Virginia, thirty days from this date, pursuant to an appeal from two interlocutory orders

made in the two consolidated causes of Wilson Distilling Company and others *vs.* W. J. Murray and others, and The Fleischmann Company *vs.* W. J. Murray and others, wherein you are complainants, and W. J. Murray and others, are defendants, in your favor and against them, to-wit:

An order in the said case of The Fleischmann Company *vs.* W. J. Murray and others, of date the 29th day of February, 1908, continuing the temporary restraining order therefore granted and granting an injunction in said cause; and

An order in the said two consolidated causes of date the 7th day of March, 1908, continuing the said temporary restrain-
(418) ing order and granting an injunction and appointing receivers in said two consolidated causes.

To show cause if any there be why the said interlocutory orders should not be corrected and reversed, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Jeter C. Pritchard, Judge of the Circuit Court of the United States for the Fourth Circuit, this 27th day of March, 1908.

J. C. PRITCHARD,
U. S. Circuit Judge.

Filed March 27, 1908.

C. J. MURPHY,
C. C. C. U. S., Dist. S. C.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA. IN EQUITY.

(419)

The Wilson Distilling Company *vs.* W. J. Murray et al.	Consolidated Causes.
The Fleischmann Company *vs.* W. J. Murray et al.	

We hereby acknowledge service of the citation on appeal herein, of date March 27th, 1908, and receipt of a copy thereof this 2nd day of April, 1908.

T. MOULTRIE MORDECAI,
FRANK CARTER &
H. C. CHEDESTER,
Solicitors for the following named complainants: Wilson Distilling Co., Gallagher & Burton, John M. Cranston.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA. IN EQUITY.

(420)

The Wilson Distilling Company
vs.
W. J. Murray et al.

The Fleischmann Company
vs.
W. J. Murray et al.

Consolidated Causes.

We hereby acknowledge service of the citation on appeal herein, of date March 27th, 1908, and receipt of a copy thereof this 2nd day of April, 1908.

MERRICK & BARNARD,

Solicitors for the following named complainants: The Fleischmann Company.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA. IN EQUITY.

(421)

The Wilson Distilling Company
vs.
W. J. Murray et al.

The Fleischmann Company
vs.
W. J. Murray et al.

Consolidated Causes.

We hereby acknowledge service of the citation on appeal herein, of date March 27th, 1908, and receipt of a copy thereof this 4th day of April, 1908.

NELSON & NELSON,
OSBORNE & LAWRENCE,

Solicitors for the following named complainants: Ullman & Co., Anchor Distilling Company, D. Sachs & Sons, Big Springs Distilling Co., Belair Distilling Co., Richard & Co.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA. IN EQUITY.

(422)

The Wilson Distilling Company
vs.
W. J. Murray et al.

The Fleischmann Company
vs.
W. J. Murray et al.

} Consolidated Causes.

We hereby acknowledge service of the citation on appeal herein, of date March 27th, 1908, and receipt of a copy thereof this 10th day of April, 1908.

OSBORNE & LAWRENCE,

Solicitor for the following named complainants: Big Springs Distilling Company, Ulman & Company, Anchor Distilling Company, Belair Distilling Company, Richard & Company, D. Sachs & Sons.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA. IN EQUITY.

(423)

The Wilson Distilling Company
vs.
W. J. Murray et al.

The Fleischmann Company
vs.
W. J. Murray et al.

} Consolidated Causes.

We hereby acknowledge service of the citation on appeal herein, of date March 27th, 1908, and receipt of a copy thereof this 4th day of April, 1908.

WESTON & AYCOCK,

Solicitors for the following named complainants: New York and Kentucky Co.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA. IN EQUITY.

(424)

The Wilson Distilling Company
vs.
W. J. Murray et al.

The Fleischmann Company
vs.
W. J. Murray et al.

} Consolidated Causes.

We hereby acknowledge service of the citation on appeal herein, of date March 27th, 1908, and receipt of a copy thereof this 9th day of April, 1908.

W. E. DANIEL,
Solicitor for the following named complainants: Garrett & Co.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA. IN EQUITY.

(425)

The Wilson Distilling Company
vs.
W. J. Murray et al.

The Fleischmann Company
vs.
W. J. Murray et al.

} Consolidated Causes.

THE STATE OF SOUTH CAROLINA,
County of Charleston, } *ss:*

J. D. Adams, being duly sworn, says that he is United States Marshal for the District of South Carolina, and that he served the citation on appeal herein of date March 27th, 1908, on T. Moultrie Mordecai, Esq., as solicitor of record for the complainant Anheuser-Busch Brewing Association, by delivering a copy of same to him personally and leaving the same with him at Charleston, S. C., on the 18th day of April, 1908.

J. DUNCAN ADAMS,
U. S. Marshal.
By V. V. CLAYTON, Deputy.

Sworn to and subscribed before me this 18th day of April, 1908.

N. M. PORTER,
Not. Pub. for S. C.

[Notarial Seal]

Order Striking Anheuser Busch Brewing Association from Record.

(426) Filed 18th day of April, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, IN EQUITY.

The Wilson Distilling Company
vs.
W. J. Murray et al.

The Fleischmann Company
vs.
W. J. Murray et al.

} Consolidated causes

It appearing to the court that Anheuser Busch Brewing Association, one of the complainants herein, prior to the hearing and determination of the order of injunction and appointment of receivers, ceased to have any interest in the litigation, they having been settled with.

It is ordered that the name of Anheuser Busch Brewing Association be, and the same is hereby, stricken from the record, as a party complainant.

WM. H. BRAWLEY,
U. S. Judge.

April 18th, 1908.

We consent.

T. MOULTREE MORDECAI,
FRANK CARTER,
H. C. CHEDESTER.

Order to Transmit Record.

(427) And, thereupon, it is ordered by the court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Fourth Circuit, and the same is transmitted accordingly.

[Seal of Court]

C. J. MURPHY,
C. C. C. U. S., Dist. S. C.

Clerk's Certificate.

UNITED STATES OF AMERICA, DISTRICT OF SOUTH CAROLINA,
IN THE CIRCUIT COURT, FOURTH CIRCUIT.
IN EQUITY.

(428) I, C. J. Murphy, Clerk of the Circuit Court of the United States for the District of South Carolina, do hereby certify that the foregoing is a true and correct copy of all records and proceedings in the cases of Wilson Distilling Company, complainant, against W. J. Murray et al., defendants, and The Fleischmann Company, complainant, against W. J. Murray et al., defendants, and the consolidated cases of Wilson Distilling Company et al., and The Fleischmann Company, complainants, against W. J. Murray et al., defendants, rendered as aforesaid, together with the interlocutory orders and all things relating to the same, as appears by the records now on file in my office.

Given under my hand and seal of said court, at {Seal of Court} clerk's office, in the City of Charleston, S. C., in the district aforesaid, this 20th day of April, A. D., 1908.

C. J. MURPHY,
C. C. C. U. S., Dist. S. C.

Stipulation.

(429)
UNITED STATES OF AMERICA, IN THE CIRCUIT COURT OF APPEALS, AT RICHMOND, FOURTH CIRCUIT.

W. J. Murray et al., Complainants in Error,
vs.
Wilson Distilling Company et al., Defendants in Error.

W. J. Murray et al., Complainants in Error,
vs.
Fleischmann Company et al., Defendants in Error.

It is hereby stipulated between counsel in accordance with the provisions of the Rule of this court, that there shall be omitted from the printed transcript of the record in these causes, so much of the same as contains the evidence in the case of Ullman & Co. before the State Dispensary Commission and that

on the argument of the cause, counsel on either side may refer to all or any portion of said evidence so omitted, a certified typewritten copy thereof being retained by the clerk of this court from the record transmitted to him for the purpose of such reference if need be.

T. MOULTRIE MORDECAI,
FRANK CARTER &
A. C. CHEDESTER,
GEO. B. LESTER,
MERRICK & BARNARD.

Stipulation to Omit from Printed Records Evidence in Ullman Case.

(430) Filed May 4, 1908.

UNITED STATES OF AMERICA, IN THE CIRCUIT COURT OF APPEALS, AT RICHMOND, FOURTH CIRCUIT.

W. J. Murray et al., Complainants in Error,
vs.
Wilson Distilling Company et al., Defendants in Error.

W. J. Murray et al., Complainants in Error,
vs.
Fleischmann Company et al., Defendants in Error.

It is hereby stipulated between counsel in accordance with the provisions of the Rule of this court, that there shall be omitted from the printed transcript of the record in these causes, so much of the same as contains the evidence in the case of Ullman & Co. before the State Dispensary Commission and that on the argument of the cause, counsel on either side may refer to all or any portion of said evidence so omitted, a certified typewritten copy thereof being retained by the clerk of this court from the record transmitted to him for the purpose of such reference if need be.

T. MOULTREE MORDECAI,
J. FRASER LYON,,
STEVENSON & MATHESON,
ANDERSON, FELDER, ROUNDTREE & WILSON,
ABNER & MULLER,

PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

No. 821.

W. J. Murray, John McSween, Avery D. Patton et al., Appellants,
vs.
Wilson Distilling Company, et al., and The Fleischmann Company, Appellees.

Appeal from the Circuit Court of the United States for the District of South Carolina, at Charleston.

April 27, 1908, transcript of record is filed and the cause is docketed.

Same day, appearance of J. Fraser Lyon, Attorney General of South Carolina, W. F. Stevenson, B. L. Abney, J. S. Muller, and D. W. Rountree for the appellants, orders filed.

May 4, 1908, appearance of T. Moultrie Mordecai, Alf S. Barnard and George B. Lester for the appellees, orders filed.

May 8, 1908, twenty copies of the printed record are filed.

Motion of Appellees to Dismiss Appeal.

Filed May 23, 1908.

UNITED STATES OF AMERICA,

CIRCUIT COURT OF APPEALS,

FOURTH CIRCUIT, AT RICHMOND, VA.

No. 821.

W. J. Murray et al., Appellants,
vs.
Wilson Distilling Co. et al., Appellees.

The appellees hereby enter an appearance for that purpose and move the court to dismiss the appeal in this cause because the appellants did not docket the case and file the record thereof with the clerk of this court by or before the return day of the

citation; the said citation being dated the 27th day of March, 1908, and the appellants being required to docket the case and to file the record "by or before" the return day of said citation, which return day was thirty days from said 27th day of March, 1908, and said case was not docketed and the record was not filed "by or before" the expiration of said thirty days, nor was there any order enlarging the time for docketing the case and filing the record.

This 23rd day of May, 1908.

GEO. B. LESTER, and
ALFRED S. BARNARD,
Of counsel for appellees.

Afterwards, to-wit: on May 26, 1908, (May Term, 1908), the cause came on to be heard on the motion of the appellees to dismiss and on the merits before Chief Justice Fuller, and District Judges Waddill and Boyd, and is argued by counsel, and submitted.

Afterwards, at the same term, to-wit: on September 15, 1908, the court announced and filed its opinion, which is as follows, to-wit:

Opinion.

Filed Sept. 15, 1908.

United States Circuit Court of Appeals,

FOURTH CIRCUIT.

No. 821.

W. J. MURRAY, JOHN McSWEEN, AVERY PATTON, ET AL.,
Appellants,

versus

WILSON DISTILLING COMPANY, ET AL., AND THE FLEISCHMANN COMPANY, Appellees.

Appeal from the Circuit Court of the United States for the District of South Carolina, at Charleston.

[Argued May 26, 1908. Decided September 15, 1908.]

Before FULLER, Chief Justice, and WADDILL and BOYD, District Judges.

Argued by B. L. ABNEY, W. F. STEVENSON and D. W. ROUNTREE for appellants; (ANDERSON, FELDER, ROUNTREE & WILSON, ABNEY & MULLER, STEVENSON & MATHESON and J. FRASER LYON are on the briefs); and by T. MOULTREE MORDECAI and ALFRED S. BARNARD, SIMEON HYDE for appellees; (FRANK CARTER, H. C. CHEDESTER and GEO. B. LESTER are on the briefs.)

STATEMENT OF FACTS.

In 1892 the South Carolina legislature passed an act establishing what was called a "State Dispensary." Under the provisions of this act private individuals were forbidden to engage in either the manufacture or sale of intoxicating liquors

of all kinds and the right to carry on the liquor business in the State of South Carolina was reserved to the State. The act provided for a board of control of the Dispensary consisting of the Governor, the Comptroller-General and Attorney-General, and to this board was committed the duty of conducting and managing the State Dispensary. The business of the Dispensary, under and by virtue of the act referred to, was inauguarated under the control of the agencies designated and became the only legalized method of dealing in intoxicating liquors within the State. Among other provisions of the act were that a State Commissioner should be appointed by the Governor and that said Commissioner should turn over monthly to the Treasurer of the State the amount received from sales of liquors made by him, and the Treasurer was required to keep a separate account of said fund, and the Commissioner was authorized, with the approval of the board of control from time to time to draw warrants upon the funds in the hands of the Treasurer for the amounts necessary to pay the expenses incurred in conducting the business. It was also provided that in counties complying with the requirements of the act county dispensaries might be established and these latter were required to buy supplies of liquor from the State Dispensary, and the State Dispensary was required to sell to the county dispensaries supplies and intoxicating liquors at a profit of not more than fifty (50) per cent. At the outset there was appropriated by the State for the purpose of starting the Dispensary system the sum of $50,000, which amount has since been repaid to the State from the Dispensary receipts. In the year 1896 the board of control was changed so that instead of being constituted as above set forth it was made to consist of five members, to be elected by the General Assembly, each of said members being required to give a bond in the sum of $10,000, and the control and management of the Dispensary was conferred by law upon them. This board, as above stated, was required to furnish liquor to the county dispensers and the latter were required to remit the net proceeds of the sale of liquor to the State Treasurer. All bills for the purchase of liquor were paid by the State Treasurer upon warrants drawn by the Commissioner. Thus the sale of intoxicating liquors was conducted in South Carolina under the several acts of the legislature of that State and by the machinery provided for the purchase of liquors by the Commissioner under the direction of the board of control

of the State Dispensary and sale of liquors by the State Dispensary to the county dispensers who, in turn, sold and remitted the money arising from the sales to the State Treasurer, the expenses of operating the State Dispensary, together with all bills for spirits purchased, being paid by the State Treasurer from the Dispensary fund, which was kept separate, upon warrants of the Commissioner, approved by the board of control. By the acts of 1902 all net income derived by the State from the sale of liquors in the State under the Dispensary law was required to be apportioned among the several counties of the State for the benefit of the common schools in proportion to the deficiencies existing in the counties and so forth; and the said acts further required that the directors of the State Dispensary should pay over to the State Treasurer by January 1, 1904, in equal semi-annual payments, all of the school fund reported by them in excess of $400,000 for the benefit of the common schools of the State, to be apportioned, as above stated. The business of the State Dispensary continued from the date of its establishment in 1892 until the year 1907, when the General Assembly of South Carolina passed an act entitled "An Act to Declare the Law in Reference to, and Regulate the Manufacture and Sale, Use, etc., of, Liquors and Beverages Within the State and Police the Same." By Section 47 of this Statute it was enacted that the State Dispensary be abolished. This act was approved on the 16th day of February, 1907. At the same session of the legislature another act was passed, which was approved on the same day as the last named act, entitled "An Act to Provide for the Disposition of all Property Connected with the State Dispensary and to Wind up its Affairs," which is as follows:

(Session Laws, S. C., 1907.)

No. 402.

An Act to provide for the disposition of all property connected with the State Dispensary, and to wind up its affairs.

Sec. 1. Be it enacted by the General Assembly of the State of South Carolina, that immediately upon the approval of this Act, the Governor shall appoint a Commission of well known business men, consisting of five members, none of whom

shall be members of the General Assembly, to be known as the State Dispensary Commission, who shall each give bond for the faithful performance of the duties required, in the sum of $10,000.

Sec. 2. Said Commission shall immediately organize by the election of a Chairman and a Secretary from their number.

Sec. 3. It shall be the duty of said Commission to close out the entire business and property of the State Dispensary, except real estate, and including stock in the several County Dispensaries by disposing of all goods and property connected therewith, by collecting all debts due and by paying from the proceeds thereof all just liabilities at the earliest date practicable. Said Commission shall be at liberty to make such disposition upon such terms, times and conditions as their judgment may dictate; Provided, that no alcoholic liquors or beers shall be disposed of within the State except to County Dispensary Boards, and all liquors illegally bought by the present management may be returned to the persons, firms or corporations from whom purchased, and for determining the legality of said purchases, they are hereby authorized and directed to investigate fully the circumstances surrounding all contracts for liquors, and to employ such assistant counsel as may be approved by the Attorney General, and such expert accountants and stenographers and any other person or persons the Commission may deem necessary for the ascertainment of any fact or facts connected with said State Dispensary and its management or control at any time in the past, and to take testimony, either within or without the State; Provided, further, that all payments shall be made in gold and silver coin of the United States, in United States currency, or in national bank notes.

Sec. 4. The compensation of each member of said Commission shall be $5 per day for each day actually employed about the business, and actual expenses for the time engaged. Provided, that they shall receive no compensation for services rendered on this commission after January 1, 1908.

Sec. 5. The said Commission shall pay to the State Treasurer, after deducting their compensation and other expenses

allowed by this Act, all surplus funds on hand after paying all liabilities.

Sec. 6. The said Commission is hereby authorized to employ such bookkeepers, accountants, clerks, assistants and employees as they may deem necessary, and to contract with them at the time of employment for their compensation.

Sec. 7. The said Commission shall submit to the Governor at the earliest day practicable, a complete inventory of all property received by them, with a statement of the liabilities of the State Dispensary, and as soon as the affairs are liquidated, a report in full of their actings and doings.

Sec. 8. That said Commission shall have full power and authority to investigate the past conduct of the affairs of the Dispensary, and all the power and authority conferred upon the Committee Appointed to Investigate the Affairs of the Dispensary, as prescribed by an Act to provide for the investigation of the Dispensary, approved January 24, A. D., 1906, be and hereby is, conferred upon the Commission provided for under this Act. Provided, that for the purpose of the investigation of the affairs of the Dispensary as herein provided, each and every member of said Commission be, and hereby is, authorized and empowered, separately and individually, or collectively, to exercise the power and authority herein conferred upon the whole Commission.

Approved, the 16th day of February, A. D., 1907.

By virtue of this act W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton were duly appointed and qualified as commissioners and they entered upon the discharge of their duties as such. They proceeded to sell the personal property and collect the debts due to the Dispensary,, and the State Treasurer of South Carolina, paid over to them about $129,000 which he had in hand standing to the credit of the Dispensary fund and, all together from the sale of the property, the collection of debts and the amount paid over by the State Treasurer, there came to the hands of these commissioners about the sum of $800,000 to be administered by them under the provisions of the law above set out. That the money thus realized from time to time, received by the defend-

ants who constitute the State Dispensary Commission, was, at the time of the commencement of this suit, in the hands of the Commission or deposited in banks in the State of South Carolina, subject to the check of the Commission, and no part of the said money is in the Treasury of the State of South Carolina or has been in any way mingled with the funds of the said State, but has been kept separate and apart in the hands of said Commission, subject to its absolute control and disposition. The total amount of claims for liquors and supplies furnished, outstanding against the State Dispensary, was about $600,000, held by various corporations, partnerships and persons, among whom were the original complainants and the several intervening complainants in this action. It further appears from the record that the complainants furnished to the defendants, at their request, itemized statements of their accounts against the State Dispensary and the said accounts were, by comparison with the books kept by the Dispensary, found to be in substantial agreement with said books. It further appears that the accounts of complainants were audited at the instance of the defendants and that the several amounts which are claimed were found to be correct. As the several complainants and intervenors in this action base their rights practically upon the same grounds, we will, in order to avoid confusion in the further presentation of the case, treat alone of the claim of The Fleischmann Company, one of the original complainants, the balance due said company being, as alleged, the sum of $66,501.10, which said claim, as before stated, was presented to the Dispensary Commission, was compared with the books kept by the State Dispensary and also audited, as above stated, and found to be, as alleged, substantially correct. This complainant alleges further that this claim was duly presented to the Dispensary Commission and payment thereof demanded before the bringing of this action, and defendants refused to pay the same or any part thereof. It further appears that at the time the defendants took charge of the affairs of the State Dispensary, to close them up under the provisions of the Act of the Legislature, there was, among other liquors on hand, some of that which had been bought from the The Fleischmann Company, and by agreement between the complainant and the Commission this was returned to the complainants and credited on the claim of the latter. It also appears that other liquors and supplies for which the complainant, The Fleischmann Company, makes

claim had been disposed of by the State Dispensary authorities, in the course of the operations of the Dispensary, before the defendants in the present action took charge.

In order to give a full understanding of the questions presented, we set out the original bill filed by The Fleischmann Company, with the answer of the respondents thereto. This complainant afterwards filed an amended and supplemental bill, but it is not deemed necessary to set it out, as the original bill and return, or answer thereto, together with the statement of facts heretofore given, present clearly the questions to be considered:

"Bill of Complaint.

"Filed Jan. 23, 1908.

"IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, FOURTH CIRCUIT, AT COLUMBIA.

"The Fleischmann Company, Complainant, *vs.* "W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, constituting the State Dispensary Commission of South Carolina, and W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, individually, Defendants.	In Equity.

"To the Honorable Judges of the Circuit Court of the United States for the District of South Carolina:

"The Fleischmann Company, a corporation organized and existing under and by virtue of the laws of the State of Ohio, and a citizen of said State, brings this, its bill against W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, constituting the State Dispensary Commission of the State of South Carolina, and said defendants individually, all of whom are citizens and residents of said State of South Carolina, and, thereupon, your orator complains and says:

"I.

"That your orator, The Fleischmann Company, was, at all times hereinafter mentioned, and still is, a corporation, duly created, organized and existing, under and by virtue of the laws of the State of Ohio, and is a citizen and resident thereof, having its principal office in the City of Cincinnati, in said State, and that the defendant, W. J. Murray, is a citizen and resident of the State of South Carolina, residing at Columbia, in said State; the defendant John McSween, is a citizen and resident of said State of South Carolina, residing at Timmonsville, in said State; the defendant, B. F. Arthur, is a citizen and a resident of the State of South Carolina, residing at Union, in said State; that the defendant, C. K. Henderson, is a citizen and resident of the State of South Carolina, residing at Aiken, in said State; and the defendant, Avery Patton is a citizen and resident of the State of South Carolina, residing at Greenville in said State.

"II.

"And your orator further shows that many years prior to the passage of the act hereinafter mentioned, there was duly created and established by law, in the State of South Carolina, an institution for the purpose of buying, selling and distributing alcoholic liquors within said State, known as the State Dispensary, and that by the terms of the law creating and establishing said Dispensary, the managing agents or officers thereof were duly authorized, directed and empowered to purchase in its name and on its behalf, all kinds of spirituous, vinous and malt liquors, and to pledge the credit of the said State Dispensary for the payment of the same.

"III.

"And your orator further shows that the General Assembly of the State of South Carolina, at its session held in the year 1907, for the purpose of discontinuing said State Dispensary, disposing of its assets and paying off its creditors, passed an act entitled "An Act to Provide for the Disposition of all Property Connected with the State Dispensary and to Wind up its Affairs, which said act is in words and figures as follows:"

The bill here sets out in full the Act of the South Carolina Legislature of February 16, 1907, which is copied in the statement of facts hereinbefore.

"IV.

"That the said Act was duly approved on the 16th day of February, 1907, and within a short time thereafter the Commission therein provided for was created by the appointment of the defendants, as Commissioners, and said defendants, having duly qualified and organized pursuant to said Act, became, and do now constitute, the State Dispensary Commission, and as such are charged with the execution of all the powers conferred and the performance of all the duties imposed upon said Commission by the said Act.

"V.

"That, immediately upon their qualification and organization as hereinbefore alleged, the defendants entered upon the discharge of said duties, and in accordance with the directions contained in said Act, took possession and control of the entire business and property of the State Dispensary, and have, as your orator is informed and believes, sold said property and collected the debts due to said State Dispensary and the proceeds arising from said sale and collection are, or ought to be, in the hands of said defendants, applicable to the payment of the liabilities of said State Dispensary, and to the other uses and purposes designated in said Act.

"VI.

"And your orator further shows that, prior to the passage of the said Act of 1907, providing for a sale of the property of the said State Dispensary and the winding up of its affairs, and while the said State Dispensary was still engaged in business, your orator sold and delivered to it at prices which were entirely reasonable and mutually satisfactory, a large quantity of valuable whiskies and other spirituous liquors, all of which whiskies and liquors were received and accepted by said State Dispensary, and had been, except as hereinafter alleged, sold or disposed of by it at a substantial profit; that the sales so made

by your orator were, in every respect, regular and legal and were made upon orders properly and lawfully given by the persons duly authorized to give such orders; and the whiskies were delivered to said State Dispensary under a contract, promise and agreement that your orator should be paid the prices charged therefor, and the said State Dispensary became and was at the time of the passage of said Act, and at the time the defendants took charge of said business and property, and still is, justly indebted to your orator for the same.

"VII.

"That, within a short time after the appointment and qualification of the defendants and their organization as the State Dispensary Commission, your orator being desirous of having its account against the State Dispensary settled, and in order that all differences might be reconciled, or disputes, if any, adjusted, and the amount due to your orator fixed and determined, filed with said defendants an itemized statement of its account and requested the defendants to have the same audited so that it could be passed upon; that, thereafter, the defendants notified your orator that there was still on hand and undisposed of a portion of the whiskey which your orator had sold to the said State Dispensary and asked your orator to take back said whiskey and allow a credit therefor, then and there holding out as an inducement to your orator for so doing, that if they were permitted to return said goods, it would greatly facilitate a settlement with your orator and enable them to make a much earlier payment of the account, and your orator, being anxious to remove every possible cause of delay in obtaining a settlement of its claim, did take back all of said goods and give credit therefor at the invoice price thereof.

"VIII.

"That, on or about the 24th day of May, 1907, the defendants advised your orator that, in comparing its account with the books kept by the State Dispensary, they had discovered a discrepancy between the amount claimed by your orator and the amount shown by said books to be due, of $292.14, growing out of certain credits to which the said State Dispensary was entitled, and which your orator had failed to allow, but that, in

every other particular, your orator's account was, according to the audit made by the defendants, correct, and corresponded with the said books, and that if your orator would allow said credit there would be no further dispute as to the amount due to your orator, and your orator being still anxious to get its account adjusted and receive payment of the same, did consent that said sum might be deducted, and, thereupon, it was agreed between your orator and the defendants, that there was, on the date above mentioned, a balance of $66,501.19, justly due and owing to your orator by the said State Dispensary, which said sum the defendants then and there agreed to pay, but, notwithstanding your orator has made frequent demands on them, they have refused and still refuse to pay the same.

"IX.

"And your orator further shows that, as it is informed and believes, the defendants have received from the sale of the property of the State Dispensary and the collection of debts due it, and now have in their hands a large sum of money, amounting to upwards of $800,000.00, and that this sum, if properly preserved and applied, will be amply sufficient to pay off and discharge the claim of your orator and all other just liabilities of said State Dispensary, which said liabilities do not, as your orator is informed and believes, exceed the sum of $609,000.00, all of which facts will more fully appear from the report made by the defendants to the Governor of the State of South Carolina, on or about the 4th day of January, 1908, to which report reference is hereby made for the ascertainment of said amounts.

"X.

"That, as your orator is advised and believes, the money received by the defendants and held by them as hereinbefore alleged, having been placed in their possession for the specific purpose of paying all the just liabilities of the State Dispensary, became and now constitutes a trust found in the hands of said defendants, and the said defendants hold the same as trustees for your orator and the other creditors of the said State Dispensary, and the amount due your orator having been determined and agreed upon, your orator is entitled to have said amount immediately paid to it out of said fund.

"XI.

"And your orator further shows that said defendants are abusing the trusts reposed in them by wrongfully and unlawfully failing and refusing to carry out the terms and provisions of said Act of 1907 of the General Assembly of the State of South Carolina and that the greater part of the money which the defendants have received, as aforesaid, has been on deposit for many months, and is now on deposit in certain banks in the State of South Carolina, in which banks the said defendants, or some of them, are respectively interested, either as officers, stockholders or directors; that a large sum of said money is now in the National Loan & Exchange Bank of Columbia, in which bank the defendant Murray, who is the Chairman of the Dispensary Commission, is a large stockholder and a director; that another large portion of said money is deposited in the Bank of Timmonsville, in which said bank the defendant McSween is a stockholder and a director, and is also its president; that another large portion of said money is on deposit in the People's Bank of Union, in which bank the defendants Arthur is a stockholder and a director, and also its president; that another large portion of said money is on deposit in the Bank of Aiken, in which bank the defendant Henderson is a stockholder and director; that another portion of said money is deposited in the Piedmont Savings & Investment Co. of Greenville, in which the defendant Patton is a stockholder and director, and a portion of said money is deposited in the Merchants & Farmers Bank of Cheraw, in which bank one W. F. Stevenson, who resides in the said town of Cheraw, and who is the attorney for the defendants constituting the State Dispensary Commission, is a stockholder and director, and also its president.

"That the said defendants have wrongfully, unlawfully and fraudulently declined and refused to make distribution of the said money among the creditors of said State Dispensary or to pay the claim of your orator, or any of the other of said creditors, for the reason, as your orator verily believes and alleges the fact to be, that there has been formed and now exists an unlawful understanding or agreement between the defendants, by which it has been decided that the money deposited in the banks above named shall be held and allowed to remain as long as possible in said banks and be used by them for their own benefit and profit.

"XII.

"And your orator further shows that there are a large number of persons claiming to be creditors of the said State Dispensary and seeking to collect from the defendants various sums ranging in amount from one to many thousand dollars; that some of said persons, for the purpose of compelling the payment of their debts, have already brought suit against said defendants, and others are, as your orator is informed and believes, threatening to institute similar actions; and if the defendants shall be required or permitted to defend a multiplicity of such suits in order to determine the validity of each claim against them, and shall be allowed, as they have declared their intention to do, to defer the payment of all claims until the final termination of said suits, a large part of the funds in their hands will be wasted in expensive litigation and court costs, and a great wrong, injury and injustice will be done to your orator and the other creditors whose claims are admitted to be just and correct, and about which there is and can be no dispute.

"XIII.

"And your orator further shows that, although the said defendants have in their hands the large sum of money hereinbefore mentioned, and although they are wrongfully and unlawfully retaining said money for the use and benefit of institutions in which they are personally interested, and are wrongfully and unlawfully refusing to carry out and perform the duties and trusts imposed upon them by the General Assembly of the State of South Carolina, the said defendants have only given bonds in the sum of $10,000.00 each, and they are now, as your orator is informed and believes, threatening to take measures to have an act passed by the General Assembly of South Carolina terminating their Commission and providing for a transfer of the money in their hands to the State Treasurer, which money ought to be applied to the payment of the debts due to your orator and the other creditors of the said State Dispensary, and thus, if possible, place the same beyond the reach, or by some other means, impair the contract rights of your orator and said other creditors, and, as your orator is advised and believes, unless the defendants are restrained and enjoined from exercising any control over or in any way inter-

fering further with said fund, the said defendants will waste or wrongfully divert the same to the great and irreparable damage of your orator and all the other creditors of the State Dispensary.

"XIV.

"And your orator further shows, upon information and belief, that there is a very wide difference between the opinions of the defendants as to the duties required of them as members of the Dispensary Commission, and the proper manner of performing said duties; that the defendant B. F. Arthur, although still a member of said Commission has declined and refused to take any further part in the proceedings thereof, and has not, for at least eight months, attended any of the meetings of said Commission, or participated in any of its deliberations; that the other four defendants as members of said Commission are about equally divided as to what course ought to be pursued with reference to the ascertainment of the just liabilities of the State Dispensary and the payment of the same, and that, by reason of such division, the said defendants have become engaged in a dispute among themselves, which renders it almost impossible for them ever to agree upon any plan by which to carry out the provisions of the Act of 1907 of the General Assembly of South Carolina and to execute the trust imposed upon them by said Act, and, as your orator is advised and believes, unless this Honorable Court shall take charge of the trust fund now in the hands of the defendants as members of said Commission, and administer the same in accordance with the provisions of the said Act of 1907, your orator and the other creditors of said State Dispensary, will, to their great and irreparable damage, be indefinitely delayed in the collection of their claims.

"XV.

"And your orator further shows, upon information and belief, that the defendants now allege and pretend that there were certain irregularities and fraud in connection with some of the sales of liquors made to the former officers of the State Dispensary, and the defendants have entered into an unlawful combination or conspiracy with one J. Fraser Lyon, the present Attorney General of the State of South Carolina, and under whose advice said defendants are acting, to aid the said Lyon

in carrying out his frequent threats to prosecute and imprison said officers, and to that end, have agreed among themselves and with said Lyon to withhold the payment of the claim of your orator and all other creditors, until the said Lyon has obtained such evidence as may be sufficient to prove the guilt and secure the conviction of said officers; that under and pursuant to this agreement, combination or conspiracy the defendants have refused and are still refusing to carry out the provisions of the Act of 1907, and to pay the claim of your orator and the other just liabilities of said State Dispensary, although the account of your orator has been duly audited, the amount claimed admitted to be justly due and payable, as hereinbefore alleged, and notwithstanding the fact that the defendants have never made any pretense or claim that either of the sales made by your orator was, in any respect, irregular, illegal or fraudulent, and notwithstanding the frequent promises and agreements by the defendants to pay the amount so admitted to be due.

"XVI.

"And your orator further shows that, notwithstanding the fact that the amount claimed by your orator has been admitted by the defendants to be a just liability against the said State Dispensary, and now due and payable out of the fund in their hands and although the said defendants have never claimed or pretended that said amount was subject to any off-sets, credits or counter claims, your orator is ready, able and willing, if this Honorable Court shall direct that the amount due to it be immediately paid, to execute and deliver to the said defendants a good and sufficient bond in such sum as may be required by this Honorable Court, to the full amount of its claim, if necessary, conditioned to pay to the said defendants all such amounts as may be, upon the hearing of this cause, found and adjudged to be due by your orator to these defendants by way of off-sets, reduction, credit, counter-claim or otherwise.

"In consideration whereof, and for as much as your orator is without remedy and can obtain adequate relief only in a court of equity, and to the end that the defendants may be prevented from committing further wrongs and trespasses against the rights of your orator, and for the purpose of preserving the funds in the hands of the defendants and of enforcing the rights and equities of your orator in and to the same, and preventing

further waste, loss and damage, by reason of the facts alleged in this bill, your orator prays:

"(1) That this Honorable Court will either forthwith appoint a receiver to take charge of and administer as a trust fund all the money now in the hands of the defendants arising out of the sale of property belonging to the State Dispensary of South Carolina or from the collection of debts due it; or direct and decree that the amount admitted to be due to your orator be immediately paid to it upon the execution by your orator of a good and sufficient bond to be approved by the court and conditioned to pay to the defendants all such sum or sums as may be found to be due them by your orator and adjudged to be paid by it.

"(2) That the defendants, their agents, servants, attorneys and employes be restrained and enjoined from disposing of or paying out, or in any manner interfering further with said fund or any part thereof, except to transfer the same to the receiver appointed by the court, or to pay the amount due to your orator as the court may direct.

"(3) That it be referred to a master to ascertain and determine the amount due to your orator for goods sold and delivered by it to the said State Dispensary, and that a decree be entered ordering and directing that the amount so found to be due be immediately paid to your orator. That the defendants be required to set forth an account of all and every sum or sums of money received by them, or either of them, or which ought to have been received by them, or which has been received by any person or persons, by their or either of their orders, or for their or either of their use, from the sale of any property of the said State Dispensary or the collection of and debt or debts due to it, and when and from whom, and from what in particular, all and every such sums were respectively received, and how the same respectively have been applied or disposed of.

"And that your orator have such other and further relief in the premises, as the nature of the circumstances of this case may require, and as to the court may seem meet and proper;

"And, may it please your Honors to grant unto your orator a writ of injunction, conformable to the prayer of this bill,

and also a writ of subpœna directed to the said defendants, commanding them, and each of them, to appear and answer this bill of complaint, but not under oath, answer under oath being hereby expressly waived, and to stand to, perform and abide by such orders, directions and decrees in the premises as to the court shall seem meet or be required by the principles of equity and good conscience.

"Return of Defendants.

"Filed January 29th, 1908.

"In the Circuit Court of the United States for the District of South Carolina.

"The Fleischmann Company, Complainants, vs. "W. J. Murray et al., constituting the State Dispensary Commission of South Carolina, and W. J. Murray et al., individually, Defendants.	In Equity.

"Come now W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, constituting the State Dispensary Commission of South Carolina, and W. J. Murray, John McSween, B. F. Arthur, C. K. Henderson and Avery Patton, and without submitting themselves to the jurisdiction of this Honorable Court, but, on, the contrary, insisting that it is without jurisdiction in the premises, and reserving the right to demur, plead or answer in accordance with the rules of practice and procedure which obtain in this court, and solely in response, and by way of a return to the rule to show cause granted on the 21st day of January, 1908, 'why the relief prayed for in the said bill should not be granted and why a receiver should not be appointed by this court to take charge of and administer all of the funds now in the hands of said defendants arising from the sale of property belonging to the State Dispensary or from the collection of any debts due it,' and for cause in this behalf these defendants say:

"1.

"That the said plaintiff has not by and in said bill stated such a cause as doth or ought to entitle it to any such relief as

is thereby sought or prayed for from or against these defendants, or either of them.

"2.

"That it appears from the allegations contained in the complainant's bill that the said suit is a suit, in fact and in legal effect, against the State of South Carolina and not against these defendants or either of them, except as in their official capacity they represent said State, and therefore is contrary to the provisions of the eleventh amendment to the Constitution of the United States of America.

"3.

"That it appears from the allegations in said bill that the said suit is a suit against the State of South Carolina for that the purpose and intention thereof is to administer the funds and moneys belonging to the State of South Carolina and in the custody of its duly authorized agents; to coerce the State of South Carolina in the payment of the alleged debt of the plaintiff; and to restrain a duly constituted court of the State in violation of section 720 of the revised statutes.

"4.

"These defendants deny the allegations in paragraph 2 of the bill of complaint and they aver that 'The manufacture, sale, barter and exchange of intoxicating liquors was prohibited, and the State of South Carolina in the exercise of her police power engaged in and monopolized the liquor traffic, and to that end appointed and established the State Dispensary and appropriated $50,000.00, for commencing said business.

"Said Dispensary, however, had no existence or entity or credit separate and apart from the said State. It was a mere agency of the State for the conduct and operation of her business. The business belonged to the State. All purchases therefor were made by the State and upon her credit. All profits of the business and the stock on hand at the time the State Dispensary was abolished, belonged to the State.

"5.

"Under the Act creating the State Dispensary Commission and in the exercise of the powers, rights and the duties

conferred upon said Commission and these defendants by said Act, and by the Act approved January 24th, 1906, these defendants closed out the entire business and property of the State Dispensary, except real estate, and collected a large part of the debts, and thus the fund in controversy was realized.

"6.

"These defendants deny the averments contained in paragraph 10 of the bill of compliant and say that said funds are not trust funds, and that these defendants do not hold or control the same, as trustees, either for the complainant or other alleged creditors of the State, or for any one else. They aver that said funds are in their custody or control as officers of the State and at the will of the State, and are to be disposed of in accordance with the provisions of the Act creating the Commission, unless said Act is amended or repealed. They further aver that the said funds are the property of the State of South Carolina and are in the possession of the said State, as the control or possession of the said funds are in the defendants as the officers of the State, and their possession or control is the possession or control of the State.

"7.

"They further aver that they, as individuals, have no interest whatever in the litigation or in the funds in controversy, and that their sole duty and liability with respect to said funds, is to the State of Souh Carolina, to her General Assembly and Governor. That the claim of the plaintiff and all others for goods sold to the State Dispensary are against the State, and not against the State Dispensary or against the State Dispensary Commission, or against these defendants, either in their official or individual capacity. Neither the State Dispensary Commission, or these defendants, as officers or individuals, sustain any relation or privity to the plaintiff, contractural or otherwise. They owe no duty to, and are under no liability to the plaintiff or to any other person holding claims of like character against the State.

"8.

"These defendants further say that they have exercised the powers and authority granted by the General Assembly only

for the purpose of enabling them to perform their duties fairly and promptly, and they submit that they have proceeded with the work with all possible expedition and dispatch.

"They requested the Attorney General and his associates to investigate and secure evidence as to the validity and justice of the various claims against the State. From time to time they impressed upon said parties their desire to complete the work as soon as possible, and repeatedly urged the necessity of prompt action. It was not until within the last thirty days, however, that said parties reported that they had secured sufficient evidence, and were ready to proceed with the hearing of all said claims.

"These defendants say upon information and belief that this report was made as early as practicable, as there was a large number of claims extending over a period of several years, and the evidence relative to the same was gathered from various States.

"Immediately upon receipt of this report, the commission assigned 41 of said claims for a hearing, and among these was plaintiff's claim. A docket was made up, copy of which will be shown to the court, and a notice was served upon the plaintiff and upon all others whose claims had been assigned for a hearing as stated. A formal notice was served upon the plaintiff, requiring it to produce certain of its books of original entry relating to its accounts against the State.

"9.

"On the 14th day of January, the Commission commenced the hearing of said claims. It took up the claims of Ullman & Co. and of the Anchor Distilling Company. After hearing of evidence the Commission reached the conclusion that instead of the State being indebted to said claimant in the sum of $36,926.78, that Ullman & Co. was indebted to the State in the sum of $31,390.72, and thereupon they returned a judgment in favor of the State against Ullman & Co. in accordance with their findings. A transcript of the evidence in said case, and the copy of the judgment of the Commission will be exhibited to the court.

"10.

"Plaintiff's claim was assigned for January 23rd. George B. Lester, Esq., general counsel for plaintiff was present on

January 14th and claimed an agreement with Mr. Stevenson that plaintiff's case would be heard that day. Before announcing ready to proceed, the counsel for the State demanded the production of the books covered by the notice served upon the plaintiff as aforesaid, and notified Mr. Lester that they desired the presence of one Early who acted for the plaintiff in connection with sales to the State and whom they desired to examine in connection with its claim. Thereupon the said George B. Lester stated that the plaintiff would decline to produce its books or have said Early present. He challenged the jurisdiction of the Commission to enter upon a full investigation of all transactions between the plaintiff and the officials of the State Dispensary, and stated that he would appeal to the Federal Court for relief.

"11.

"The Commission is advised by the Attorney General and his associates that the claim of the plaintiff for goods sold by it to the State Dispensary is unjust and invalid and they have evidence to establish (a) That the plaintiff and the Gerson-Seligman Company are one and the same, as the latter is a mere trade name under which the former transacted business and was used for the purpose of avoiding the provision of the statute which prohibits any person, firm or corporation from submitting more than one bid.

"(b) That there existed between the plaintiff and Gerson-Seligman Company and its agents and representatives and a majority of the said members of the Board of the South Carolina Dispensary a conspiracy to defraud and cheat the State of South Carolina and in pursuance thereof, the said plaintiff by and with the aid and assistance of the said Board of Directors, or a majority thereof, did cheat and defraud said State of South Carolina by charging and collecting from said State prices for the goods sold to the State which were largely in excess of the market value thereof, which overcharges were by agreement between conspirators made and used for the purpose of corrupting and bribing the officials and agents of said State of South Carolina to the end that the Board of Directors of the Dispensary might be induced to purchase the goods of said plaintiff at such excess prices and the difference between the fair market value of the goods so sold by said plaintiff to the said

State and the prices at which said goods were so purchased from the plaintiff was fraudulently, and unlawfully employed by the plaintiff in bribing and corrupting the officials and agents of the said State, so that said State was cheated and defrauded out of a large sum of money in excess of the amount now claimed to be due by the plaintiff.

"(c) That the plaintiff did not comply with the law of the State of South Carolina relative to the sale and purchase by the State Board of Directors in that they failed to comply with the provisions of said law requiring that only one bid shall be made by any one for said plaintiff and the said Gerson-Seligman Company, being in fact one and the same firm, did fraudulently and deceitfully pretend that they were separate firms and did frequently make two or more bids at the same time to the Treasurer of said State for consideration by the State Board of Directors of the South Carolina Dispensary.

"(d) They failed to accompany their bids, or all of them, with the chemical analysis of the liquor offered for same.

"(e) They failed to furnish the bonds required by law to insure the compliance by them with the terms of the contract of purchase and sale between them and the State Dispensary.

"(f) That they violated said law in that they constantly had agents, representatives and solicitors in the State for the purpose of soliciting the purchase of their goods by said State, and that through its said agents and representatives soliciting business from said Board of Directors.

"(g) That the gross amount of sales made by the plaintiff and by said Gerson-Seligman Company to the State amounted in the aggregate to several hundred thousand dollars, and that in each of the said bills there were prices charged in pursuance of said conspiracy in excess of said fair market value.

"(h) That the plaintiff sold to the State the same brand of liquors of a lower proof, at a price higher than it sold the same brand of goods of a higher proof to other parties.

"(i) That the plaintiff sold to the State as whiskey an artificial whiskey or concoction made of spirits with a trace of whiskey added to it.

"(j) That in pursuance of said conspiracy the advertisements for bids were illegal in that the prices of the liquors to be furnished were fixed in the advertisements and thus competition was prevented.

"(k) That upon a just accounting between the State and the plaintiff, the plaintiff will be indebted to the State in a considerable amount.

"12.

"From the evidence already before the Commission, it is satisfied of the existence of a conspiracy to which some of the creditors and some of the Board of Directors were parties, but whether the plaintiff was a party thereto and whether its claims is valid or invalid, and whether it should be paid in whole or in part, are matters to be determined, as these defendants are advised after the Commission has heard the evidence of both plaintiff and the State.

"13.

"These defendants deny each and every allegation in the bill of complaint to the effect that these defendants had stated "That there would be no further dispute as to the amount due" plaintiff, or that these defendants had admitted that there was due the plaintiff a balance of $66,501.19, or any other amount, or that they had agreed to pay plaintiff any amount whatever, or that 'the amount due (plaintiff) had been determined and agreed upon,' or 'that the amount claimed by (plaintiff) has been admitted by the defendants to be a just lability against the State Dispensary and now due and payable out of the fund in their hands,' or that 'the said defendants have never claimed or pretended that said amount was subject to any off-sets, credits or counter-claims.' Each and every of said averments are untrue.

"14.

"Defendants deny the averment in said bill of complaint to the effect that plaintiff's account has been 'adjusted,' except to the extent that the books of the State Dispensary have been audited and the entries thereon have been brought into sub-

stantial agreement with the items of plaintiff's claim. There has been no determination or adjustment as to whether the items on said claim are proper and just charges against the State, nor whether the said claim is to be reduced in whole or in part by reason of off-sets and counter-claims, nor whether said claim or any part thereof is illegel by reason of a non-compliance with the statutes of South Carolina, or by reason of frauds and conspiracies to which the claimant was a party, and in short for any of the reasons which the Attorney General and his associates contend they can establish by the evidence to which reference has been made. Moreover, defendants are advised that until final judgment all tentative conclusions or decisions however solemnly announced were subject to modification or reversal.

"15.

"These defendants denounce as gratuitously false the charges in said bill of complaint 'that there has been formed and now exists an unlawful understanding or agreement between the defendants by which it has been decided that the money deposited in the banks above named shall be held and allowed to remain as long as possible in said banks, to be used by them for their own benefit and profit,' and that the defendants 'are wrongfully and unlawfully retaining said money for the use and benefit of the institution in which they are personally interested and are wrongfully and unlawfully refusing to carry out and perform the duties in trust imposed upon them.'

"The defendants aver that they deposited the funds received by them in thirty-one banks in the State of South Carolina, in which there is now on deposit to the credit of the State Dispensary Commission the aggregate sum of $706,599.82 on call and subject to check; that each and every of the said banks is sound and of undoubted solvency; that each and every of said deposits, with the exception of $16,505.59 on deposit with the National Loan & Exchange Bank as an active account draw interest from the date the deposits were respectively made at four per cent. per annum and are secured by State and municipal bonds and other solvent securities deposited by said banks with said Commission as collateral security for the payment of principal and interest of said respective deposits, the market value of which is largely in excess of the deposits secured thereby.

"The defendants will exhibit to the court a list of the said banks with the amount deposited in each.

"16.

"That in addition to said amounts deposited and secured as aforesaid, the Commission will hereafter receive about $100,000.00 on account debts due by various County Dispensaries, which when received will in like manner be deposited and secured.

"17.

"The defendants admit that some of them are stockholders and directors in some of the banks named, but they submit that each of the said banks was selected solely because of its recognized solvency and their willingness to secure the deposits with sufficient and satisfactory collaterals and to pay four per cent. interest thereon.

"18.

"The Commission offered $150,000.00 to the Carolina National Bank and the Bank of Columbia, both of which refused to collaterally secure the deposit, and for that reason the deposits were not made with them.

"The defendants are informed and believe that they could not have found banks, either in or out of the State of South Carolina, in which to deposit said fund which would have received said deposits on safer or more favorable terms.

"19.

"The defendants deny the allegations in paragraph 14, and aver that there is no difference between the members of the Commission as to the method to be pursued in dealing with the creditors of the State for goods sold to the State Dispensary, and that the Commission as a body is a unit on the following propositions, to-wit: (1) To require all creditors whose claims are challenged by the counsel for the State to produce their books of original entry and their documents containing material evidence and to comply with all reasonable and proper requirements prescribed by the Commission. (2) To hear all competent evidence presented by the creditors or by counsel for

the State, and after a careful and judicial consideration thereof, to determine what amounts are due by the State, and pay all claims which in their honest and impartial judgment are due by the State, and no others.

"20.

"The defendants deny that it has been eight months since Commissioner Arthur has met with the Commission. It is true that he has not attended the meetings of said Commission since November. His physician wrote the Commission that Mr. Arthur's absence from one or more of the meetings was because of his illness.

"21.

"These defendants deny the allegations contained in paragraph 15 of the bill of complaint, and they denounce as gratuitously false and malicious the allegations in said paragraph, that 'the defendants have entered into an unlawful combination or conspiracy with one J. Fraser Lyon, the present Attorney-General of the State of South Carolina, and under whose advice said defendants are acting to aid the said Lyon in carrying out his frequent threats to prosecute and imprison said officers and to that end have agreed among themselves and with said Lyon to withhold the payment of the claim of your orator and all other creditors until the said Lyon has obtained such evidence as may be sufficient to prove the guilt and secure the conviction of said officers; that under and pursuant to this agreement, combination or conspiracy, the defendants have refused and are still refusing to carry out the provisions of the Act of 1907.' The defendants aver that they withheld payment until the State could have an opportunity to collect the evidence with regard to said claims, and after a regular and orderly hearing, the Commission could reach a fair decision as to the validity and justice of the various claims.

"21.

"It is further averred that after the hearing of the case of Ullman & Co. on the 15th day of January, 1908, the Commission and the Counsel for the State were then and there ready to hear and determine the other cases assigned in their regular

order, but said cases were not heard because of the absence of some of the claimants and because of the failure of others to comply with the reasonable orders of the Commission. Thereupon the Commission assigned all of the remaining cases for hearing to be commenced on January 30th, and to continue from day to day until all of said cases have been finally disposed of. It is the purpose of said Commission to hear and decide the cases in their order, upon the calendar, and notices to this effect were sent the various claimants by registered mail, and unless prevented by the orders of this Honorable Court, the Commissioners will execute said purpose and will pay each and every claim which shall be determined to be due and owing by the State.

"22.

"It is further averred that the State is the owner of said funds and should be sole defendant, at least the State is an indispensable and necessary party.

"Defendants are advised that the State is not subject to suit and cannot be the sole defendant, or the defendant at all, and that therefore the court is without jurisdiction, but they submit that if it had jurisdiction there is no necessity for the appointment of a Receiver. The State authorized the Commission to act in the premises and these defendants have undertaken to discharge their duties fairly, promptly and conscientiously. They submit that all the allegations and insinuations made in the bill of complaint charging neglect, delay, or improper or fraudulent conduct on the part of these defendants are unfounded and false, and they submit that they should be permitted to complete the work and discharge the responsibilities imposed upon them by the State.

"23.

"These defendants demand strict proof of each and every allegation in the bill of complaint contained, except those herein specifically admitted to be true.

"24.

"The defendants submit herewith a number of affidavits and they pray that the same may be taken in connection with

and as a part of their return, and having fully answered they pray to be hence discharged with their reasonable costs in this behalf expended."

Upon the filing of the bill an order was issued by the Circuit Court of the United States for the District of South Carolina, requiring the respondents, to-wit: the five Dispensary commissioners heretofore named to appear and show cause why a receiver should not be appointed and an injunction granted as prayed for by the complainants. On the return and answer of the said commissioners, and after a hearing, receivers were named by the Circuit Court to take charge of the fund in the hands of the respondents and an injunction was also granted restraining said respondents from disposing of the funds in their hands, etc. From these decrees and orders, which were made in vacation, the respondents appealed to this court.

The positions relied upon chiefly by the appellants are that the Circuit Court is without jurisdiction in this case and the basis of the position is that the suit is one against the State of South Carolina, and is prohibited by the Eleventh Amendment; that the Dispensary was a State institution and its operation part and parcel of the exercise of independent power by a Sovereign State; that the present commissioners are officers of the State, and that the fund in their hands belongs to the State and, therefore, the State is not only a necessary, but an indispensable, party to any suit or judicial proceeding seeking the fund or any part of it; that the Dispensary Commission is a court of the State of South Carolina and that the Circuit Court is forbidden by law to enjoin its proceedings, and further, that the equities alleged in the bill are not sufficient to authorize an injunction and the appointment of receivers, as prayed for.

On the other hand the appellees insist that the commissioners (appellants) are mere ministerial agents appointed under the provisions of the Act of the South Carolina Legislature to dispose of the Dispensary property, collect the debts due and from the funds thus arising to first pay off and discharge the just liabilities incurred in the operation of the Dispensary, in the purchase of supplies, etc., and the residue, if any, to pay to the State; that the fund in the hands of the appellants was there, by virtue of the law, for special purposes, the first of which was to pay the Dispensary debts, and that the State has no interest save in the residue, if there be such, after

the just debts are paid. In other words, the position principally maintained by the appellees is that the appellants, as commissioners acting under the authority of the Act of the South Carolina Legislature, became and are trustees of a special fund, which they hold primarily for the specific purpose of paying the debts which had been incurred by the Dispensary in the course of its operations; that the action of the appellants in refusing to adjust and pay the claims of the appellees was an abuse of trust, and was an arbitrary and illegal attempt to defeat complainants of their rights.

The appellees say, therefore, that they sought relief in a court of equity, there being, under the circumstances, no adequate remedy at law, whereby they might have the just and true amounts of their claims ascertained and have the funds in the hands of the appellants applied in payment, as contemplated by the provisions of the law which created the commissioners and from which they derived their power to act.

Boyd, District Judge:

When we have cleared away the immaterial matter and have divested this controversy of all save that which relates to the substance of it, there remains to be considered two main propositions; the first is jurisdictional and presents the question whether this action is against the State of South Carolina, and, therefore, forbidden by the Eleventh Amendment to the Constitution of the United States; the second, whether the Dispensary Commission, against the several members of which this suit is brought, is a court of the State of South Carolina and, therefore, incapable of having its proceedings stayed by writ of injunction granted by a court of the United States (Section 720, Revised Statutes). To these two may be added another which relates particularly to the bill and the testimony offered by the complainant in support; the appellants having set up, as a part of their answer, that the bill and the testimony are insufficient to authorize an injunction and the appointment of receivers *pendente lite*. The principles involved in the first proposition, however, are paramount, and following closely, as affecting the right of the complainant to maintain this action and the jurisdiction of the court to entertain it, is the second proposition.

Is this a suit against the State of South Carolina, or is the purpose of the action and the disposition sought to be made

of the subject matter of such nature as to render the State an indispensable party? In other words, does the State hold the money which the complainant undertakes to subject to the payment of his debt in its sovereign capacity, as a part of its public fund for its use in supporting and carrying on the State Government? Undoubtedly the Eleventh Amendment was intended to prevent a Federal Court, in suits prosecuted by citizens of another State or citizens or subjects of a foreign State, from interfering with a State in the preservation of its autonomy, in maintaining its own system of self-government, so long as such system is in harmony with the Constitution of the United States. To this end, therefore, the funds of the State, in its Treasury, or held by its officers or agents, for use in the administration of the governmental affairs of the State, are not to be affected by the process of a Federal Court, nor can such court entertain jurisdiction of an action which has for its purpose the invasion of the right of the State to manage and control its internal affairs, or of an action which will obstruct the State authority or impair the State instrumentalities in the discharge of legitimate functions in the maintenance of the State's integrity. To be more concise, the constitutional inhibition is to the effect that the courts of the United States cannot entertain jurisdiction in an action at the instance of a citizen which seeks to recover as against the State the property belonging to the State, or the purpose of which is, and the result of which would be, to disturb the legal and orderly administration of the State's internal governmental affairs by its duly appointed officers and agents.

Does this case come within the limits prescribed? In this connection it becomes necessary to enquire if the State has any present interest in the fund in controversy which can be divested by a judicial determination of the true amount, if any, justly due the complainant. Or has the State by an Act of the Legislature relinquished all right, if any existed, to enough of the fund to pay all the just debts contracted by the Dispensary authorities? If so, can the ascertainment of the true amount of these debts and the application of the funds in the hands of the commissioners in payment affect the right of the State or in any way interfere with the authority of the State to manage and control its internal government within the bounds of its legitimate autonomy?

The first proposition presented to us rests largely upon the construction to be given to the Act of the South Carolina

Legislature, approved February 16, 1907. This act provides that "the Governor shall appoint a commission of well-known business men of five members * * * to be known as the State Dispensary Commission."

"Said commission shall immediately organize by the election of a chairman and a secretary from their number."

"It shall be the duty of said commission to close out the entire business and property of the State Dispensary, except real estate, including stock in the several county dispensaries, by disposing of all goods and property connected therewith, by collecting all debts due and *by paying from the proceeds thereof all just liabilities at the earliest date practicable.*"

By section 47 of another act passed by the South Carolina Legislature on the 16th of February, 1907, the Dispensary as a State institution was abolished, the enactment to that end being as follows:

"The State Dispensary is hereby abolished and all acts or parts of acts inconsistent with this act are hereby repealed."

Then came the other act of February 16, 1907, creating the Commission and from which we have quoted above. This act bears the title: "An Act to Provide for the Disposition of all Property Connected With the State Dispensary and to Wind up its Affairs." Thus we see that the State determined to go out of the business of dealing in liquors and through its Legislature repealed the law under which it had operated and by another act assigned all of the property, estate and effects belonging to or connected with the Dispensary to the Dispensary Commission to be reduced to cash and from the proceeds first to pay all *just liabilities.* From this source the fund now in the hands of the Commission arose. The State, through its Legislature, has passed both the title and possession of the fund involved to the Commission for the purposes designated in the act, the first of which is to pay all outstanding just liabilities which had been incurred by the State Dispensary in the course of its operations. The fund being in the hands of the Commission charged with this duty the State has no interest in so much thereof as is necessary to pay the just debts. Then how can it infringe any right of the State to have the true amount of the debts due by the defunct dispensary judicially ascertained?

In *Bank of United States* v. *Planters' Bank of Georgia,* 9 Wheaton (22 U. S.), 904, which was a suit brought in the

Circuit Court of the United States, the question of jurisdiction, in view of the Eleventh Amendment to the Constitution, is discussed. The action was founded on promissory notes payable to a person named therein and were duly transferred, assigned and delivered to the plaintiff. A plea was entered by the defendant to the jurisdiction of the court on the ground that it was a corporation in which the State of Georgia and certain individuals who were citizens of the same State were stockholders, and the point made by the defendant was that the State of Georgia being a stockholder the action was forbidden by the Eleventh Amendment. In delivering the opinion Chief Justice Marshall uses this language:

"This suit is not to be sustained because the Planters' Bank is suable in the Federal courts, but because the plaintiff has a right to sue any defendant in that court who is not withdrawn from its jurisdiction by the Constitution or by law. The suit is against a corporation and the judgment is to be satisfied by the property of the corporation, and not by that of the individual corporators. The State does not, by becoming a corporator, identify itself with the corporation. The Planters' Bank of Georgia is not the State of Georgia, although the State holds an interest in it. *It is, we think, a sound principle, that when a government becomes a partner in any trading company it divests itself, so far as concerns the transactions of that company, of its sovereign character and takes that of a private citizen.* Instead of communicating to the company its privileges and prerogatives, it descends to the level of those with whom it associates itself and takes the character which belongs to its associates and to the business which is to be transacted."

In the case of *Governor of Georgia* v. *Madrazo*, 1 Peters (26 U. S.), 110, in the course of an opinion delivered by Chief Justice Marshall, it is said:

"In *United States* v. *Peters*, the court laid down the principle that although the claims of a State may be ultimately affected by the decision of a cause, yet if the State be not necessarily a defendant the courts of the United States are bound to exercise jurisdiction."

In the case of *Pennoyer* v. *McConnaughy*, reported in the 140 U. S., page 1, very clearly drawn is the distinction in suits

brought against officers or agents of a State as to when the jurisdiction of the Circuit Courts of the United States may be maintained, and when such jurisdiction cannot. In the course of the opinion in this case the court, speaking through Mr. Justice Lamar, says:

"The first class is where the suit is brought against the officers of the State as representing the State's action and liability thus making it, though not a party to the record, the real party against which the judgment will so operate as to compel it to specifically perform its contract."

Suits within this class are forbidden. The court further says:

"The other class is where the suit is brought against defendants who, claiming to act as officers of the State and under the color of an unconstitutional statute, committed acts of wrong and injury to the rights and property of the plaintiff acquired under a contract with the State. Such suit, whether brought to recover money or property in the hands of such defendants, unlawfully taken by them in behalf of the State or for compensation in damages, or in a proper case where the remedy at law is inadequate for an injunction to prevent such wrong and injury, or for a mandamus in a like case to enforce upon the defendant the performance of a plain, legal duty, purely ministerial, is not, within the meaning of the Eleventh Amendment, an action against the State."

Suits within this class are not forbidden.

In the case of *Swasey* v. *N. C. Railroad Company*, 23 Fed. Cases, page 518, the State of North Carolina had issued bonds for the construction of the North Carolina Railroad. The State took stock in the North Carolina Railroad Company to the amount of the construction bonds so issued. The act under which the bonds were issued pledged the stock which the State held in the company for the payment of the bonds. The bondholders brought a suit in the Circuit Court of the United States for the District of North Carolina, seeking to subject the stock to the payment of overdue bonds and also accumulated interest. It was contended that the State of North Carolina was an indispensable party to this suit on account of its interest in the result and that, therefore, the suit was forbidden by the Eleventh Amendment, but the court said:

"If a State could be brought into court, it undoubtedly should be made a party before a decree is rendered, but since the case of *Osborne* v. *Bank*, 9 Wheaton, 739, it has been the uniform practice of the courts of the United States to take jurisdiction of cases affecting the property of a State in the hands of its agents without making the State a party, when the property or the agent is within the jurisdiction; in such case the court acts through the instrumentality of the property or the agent."

Another case following in the same line is that of *Chaffraix* v. *Board of Liquidation, et als.*, 11 Federal Reporter, 638, in which it is held that:

"The Circuit Court has jurisdiction to prevent by injunction the officers of a State from diverting a fund collected by taxation and set apart under a statute of that State to pay certain bonded indebtedness of said State, to the end that said fund may be preserved intact until the rights of the parties and interests of the State, if any she has, may be determined contradictorily. Such action is not forbidden by the Eleventh Amendment to the Constitution of the United States, and is necessary for the proper enforcement of Section 10 of Article 1 of the same instrument."

In the case of *Tindal* v. *Wesley*, reported in the 167 U. S., page 204, the Supreme Court further emphasizes the distinction we are discussing. That was a suit by citizens of New York against citizens of South Carolina to recover the possession of certain real property in the latter State, with damages for withholding possession. One of the defendants in his answer stated that he had no personal interest in the property, but as Secretary of State of South Carolina had custody of it and was in possession only in that capacity. The other defendant stated that he was watching, guarding and taking care of the property under employment by his co-defendant. Both defendants disclaimed any personal interest in the property and averred that the title and right of possession was in the State. It was held in that case, Mr. Justice Harlan delivering the opinion of the court, "that the suit was not one against the State within the meaning of the Eleventh Amendment to the Constitution of the United States." And it was held fur-

ther "that a suit against individuals to recover the possession of real property is not a suit against the State simply because the defendant holding possession happens to be an officer of the State and asserts that he is lawfully in possession on its behalf. *The Eleventh Amendment gives no immunity to officers or agents of a State in withholding the property of citizens without authority of law," etc.*

Further in this decision the court says:

"Of course it was competent for the defendants to prove that the lots in question belonged to the State and in that way defeat the present action. So it would have been competent for the State, if it claimed the property, to have intervened and submitted to the jurisdiction of the court to have obtained a judicial determination of the claim asserted for it by the defendants. But it did not intervene; it refused to do so."

The court goes still further and refers to the case of *South Carolina* v. *Wesley*, 155 U. S., 542, stating:

"It appears that the State, by its Attorney-General, suggested to the court that these lands were held, occupied and possessed by the State through and by its officer and agent and were used for public purpose; and without submitting the rights of the State to the jurisdiction of the court, but respectfully insisting that the court has no jurisdiction of the subject in controversy, it moved that the proceedings be dismissed. That motion was overruled and the writ of error sued out by the State was dismissed, the Chief Justice observing: 'The State does not complain that it was refused leave to intervene, but that the Circuit Court, without the intervention of the State, refused merely upon suggestion to dismiss the complaint against the defendants who were sued as individuals. The State was not a party to the record in the Circuit Court and did not become a party by intervention *pro inter esse suo* or otherwise, but expressly refused to submit its rights to the jurisdiction of the court'." (*U. S.* v. *Lee*, 106 U. S., 196, and *Georgia* v. *Jesup*, 106 U. S., 458, are also cited.)

It will be found that the doctrine declared in the several cases, as above recited, is reiterated in the case of *Gunter, Attorney-General, Etc.*, v. *Atlantic Coast Line*, 200 U. S., 273.

But we deem it unnecessary to cite further authorities upon the position we are presenting, for upon examination of the cases we have mentioned it will be found that other cases bearing upon the point are referred to. We will, however, call attention to the most recent case involving the principle, and that is in the matter of Edward T. Young, petitioner on petition for writ of habeas corpus and certiorari, decided during the last term of the Supreme Court. This case arose in the State of Minnesota and was a suit in equity brought by a certain railway company to restrain the Attorney-General and other officers of the State from enforcing a law which had been passed by the Minnesota legislature imposing penalties upon railroad corporations and officers of such corporations for violating freight rates provided under the State law. The Attorney-General of the State of Minnesota, who is the petitioner in the case, relied upon the position that the proceeding by the railroad was a suit against the State and forbidden by the Eleventh Amendment. The Supreme Court, Mr. Justice Peckham delivering the opinion, held that as the act of the legislature in question was unconstitutional, the Attorney-General and other officers of the State who undertook to enforce it to the injury of the railroad were not protected by the Eleventh Amendment; that the suit was not one against the State, but against the Attorney-General and other officers named, to restrain them from enforcing an unconstitutional act of the legislature.

In what capacity, therefore, are the members of the Commission acting? Are they officers of the State of South Carolina, discharging a duty in behalf of the State, or are they agents appointed under the act of the legislature of the State, empowered to take possession of a certain fund and directed to administer such fund in a particular manner? In other words, does the act creating the Commission and authorizing the appointment of the several members who compose it confer upon them any powers in connection with the administration of the State's affairs, or are they, by the terms of the act, holders of a special fund intrusted to them for the prime purpose of paying off and discharging the State Dispensary debts? We are constrained to hold that the fund in their hands is, by virtue of the provisions of the act, held in trust for the payment of the debts mentioned, and that the creditors of the State Dispensary have a property in the fund in the hands of the Com-

mission, to the extent that the debts are shown to be just, and that a judicial determination of the true amount of such debts can, in no way, affect the rights or interests of the State, the only interest of the State in the fund being, as declared by the act, the residue after the just liabilities of the State Dispensary are paid, and this interest is subordinate to the payment of the said liabilities. It is elementary that particular formality is not required in the creation of a trust. Any agreement or contract in writing, executed by one having the power to dispose of property, whereby it is directed that particular property or fund shall be held or dealt with for a special purpose for the benefit of another, in such case equity raises a trust in favor of the benificiary. The right to create a trust for specific purposes is not confined to individuals or private parties, but we find in Perry on Trusts, Sec. 30, "that a State, by its legislation, or by its public officers, duly authorized, can create a trust, convey property and appoint trustees." The provisions of the act creating the Dispensary Commission are strikingly similar in substance to the usual form of conveyances of property in trust for the benefit of creditors. There are the necessary three parties, the trustor, the trustees, and the *cestui que trusts*. The State, acting through the legislature, passes the title and possession of certain property, to the five appellants who are constituted a Dispensary Commission. The direction is that the appellants take this property, sell it, collect debts and, when the proceeds are in hand, pay off the just liabilities of the State Dispensary. The act then provides for the payment of certain expenses incident to the discharge of the duties devolving upon the Commission, and after that, the residue to be paid to the State. We undertake to say that there is scarcely to be found recorded anywhere an assignment by a debtor for the benefit of creditors more intelligently constructed or more readily understood. Having, therefore, determined the relation of the appellants to the fund in controversy, we answer the question propounded in the outset that THIS IS NOT A SUIT AGAINST THE STATE and THAT COMPLAINANT IS NOT FORBIDDEN TO MAINTAIN HIS ACTION BY THE ELEVENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES. The appellants are in possession of the fund which complainant is seeking to recover on the ground that it has been set apart and placed in the hands of the appellants to pay a debt which is justly due him. The State of South Carolina does not in-

tervene to assert any right to this fund or to have any interest which the State may have in it determined, but the appellants themselves raise the question of the jurisdiction of the court, basing it upon the allegation that the property in their hands belongs to the State. We think, in view of the facts in this case, upon the authorities heretofore cited, and especially under the case of *Tyndal* v. *Wesley, supra,* the appellants are not entitled to avail themselves of that defence.

This suit is not against the State, nor is the State an indispensable party. Treating the fund in the hands of the appellants as a trust fund, and the duties of the trustees in regard thereto being clearly defined, the trustor is not even a necessary party to the suit brought to compel the trustees to discharge their said duties. However, if the State elects, it may intervene and have a judicial determination as to any right it may claim. To conclude, therefore, as to the first proposition, it is our opinion that the Circuit Court has jurisdiction of this case and that the same is cognizable in a court of equity. It is the peculiar province of courts of equity to administer trusts. Indeed, it is a familiar saying that "equity loves a trust," and that it will not permit a trust to fail for the want of a trustee.

In a court of equity, which is a forum of conscience, the short-comings of the law can be supplied and every interest and right can be protected and administered so as to insure exact justice.

The proceedings in these courts are of such character as to be most conducive to the ascertainment of truth, and besides this, a chancellor may, if he deems it expedient, be aided in determining, a difficult issue of fact by calling to his assistance a jury on the law side of the docket.

It is insisted that the claims involved in this controversy, if due, are debts of the State, and appellants say that they represent the State, which is the real party in interest; yet, in this situation, they contend that in case of a dispute as to the validity of any of the claims it should be left to them to decide. In other words, their position appears to be that the agents and representatives of the debtor should constitute a tribunal, absolute in its character, to arbitrarily pass upon what, if anything, is due an alleged creditor, and if a claim be adjudged invalid to put an end to it without further opportunity for redress on the part of the creditor. To uphold such contention

would, in our opinion, in the event that a just debt due a creditor was thus rejected, deprive such creditor of his property without due process of law.

This case presents itself in another aspect which, to say the least, is somewhat novel and which, if other attending conditions were different, might affect the right of the State to avail itself of the provisions of the Eleventh Amendment. We feel justified in assuming that in the conception and adoption of the Eleventh Amendment it never entered the mind that a sovereign State would engage in business as a liquor dealer and become a trader by buying and selling an article of common traffic in competition with the citizens of the country. It may be questioned, therefore, whether the State of South Carolina, in becoming such dealer, was exercising a governmental prerogative or performing a function necessarily or properly incident to its autonomy as a State. It is not our purpose to venture an opinion in respect to this question, for in view of what we have said before, it is not necessary to the disposition of the case, and then, we have no authority in point to guide us. We will, however, recall, as having some bearing on the question, the following quotation from *Bank of United States* v. *Planters' Bank of Georgia, supra*:

"It is, we think, a sound principle that when a government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character and takes that of a private citizen."

And we may also refer to *South Carolina* v. *United States*, 199 U. S., 437. In this case the Supreme Court passed upon the right of the United States Government to require the South Carolina dispensaries to pay the privilege tax as liquor dealers. The contention was there, as here, that the Dispensary was a State institution, and, therefore, not subject to tax by the Federal government. Mr. Justice Brewer, after citing a number of cases, in the course of the opinion which he delivered for the court, uses this language:

"These decisions, while not controlling the question before us, indicate that the thought has been that the exemption of State agencies and instrumentalities from National taxation is limited to those which are of a strictly governmental

character and does not extend to those which are used by the State in the carrying on of an ordinary private business."

These declarations by the highest court of the Nation will at once suggest the inquiry, if the Dispensary was not an instrumentality of the State's government in one respect, can it be such in any other?

The second proposition is whether the State Dispensary Commission, provided for in the act of February 16, 1907, is a court of the State of South Carolina, and, therefore, cannot be enjoined because of the provisions of Section 720 of the Revised Statutes of the United States. We scarcely deem it necessary to enter into an elaborate discussion of this question, for what is said by us before practically disposes of it. However, a perusal of the act creating the Commission will at once repel the argument that it is, in any sense, a court. The constitution of South Carolina provides for courts as follows: First, a court for the trial of impeachments; second, a Supreme Court; third, a court of common pleas and general sessions; fourth, a probate court; fifth, courts of magistrates; and sixth, such other inferior courts as the General Assembly may, from time to time, in their wisdom establish. There is nothing in the act creating the Commission which suggests that the legislature contemplated that it was to be a court. It is certainly not one of the courts provided for by the constitution, as above set forth, nor does the act declare that it is a court of an inferior character. No method of procedure is provided such as is usual in a court. The Commission has no power to enter a judgment or enforce any mandate by process. It is true that by virtue of the act the commissioners are authorized to investigate transactions connected with the management and control of the State Dispensary anterior to the time that it was abolished and to ascertain if there had been fraudulent practices on the part of the Dispensary agencies in connection with the purchases of liquors, and report their actings and doings to the Governor, but they were not empowered by the act to determine any issue of fact, enter any judgment or conclude any party that might be investigated as to any right or interest involved. The only element of discretion given to the commissioners which we can find at all in the act is in section three (3) where, after providing that the commissioners shall sell the property and collect the debts and pay from the proceeds there-

of all just liabilities, etc., there is the following: "Said Commission shall be at liberty to make such disposition upon such terms, times and conditions as their judgment may dictate." This can be construed to refer only to sales of the property. In every other respect the duties which devolve upon the commissioners are purely ministerial. It is our opinion, therefore, that the contention that the Dispensary Commission is a court is not well founded.

The proposition that complainant's bill and the testimony in support of it are insufficient to authorize a decree for injunction and receivers *pedente lite* can be readily disposed of. The bill alleges a just debt still existing and unpaid for liquors sold to the Dispensary authorities by complainant. It is further alleged that said debt has been audited by the agency employed by the appellants and has been found to correspond with the entries upon the books kept by the State Dispensary board, and further, that the appellants refuse to pay complainant's debt from the funds in their hands, set apart for that purpose. If these allegations are true, the complainant has the right to invoke the aid of the court. The appellants, in their return to the order to show cause, in paragraph eleven (11), substantially deny the validity of the complainant's debt in the following language: "The Commission is advised by the Attorney-General and his associates that the claim of the plaintiff for goods sold by it to the State Dispensary is unjust and invalid, which they have evidence to establish." This is a practical admission that the appellants did not intend to pay complainant's debt from the fund in their hands. His only recourse, therefore, was by an appeal to a court of competent jurisdiction to determine as to whether or not his debt was just and if so to require the appellants to pay it from the fund in their hands for that declared purpose, and also to have the fund preserved to that end. So we dismiss that part of the case without further consideration.

Since the commencement of this action and the decision of the Circuit Court of the United States for the District of South Carolina that it had jurisdiction, and the issuing of an injunction and appointment of receivers as prayed for in complainant's bill, the Supreme Court of South Carolina, in a case brought before it, has rendered a decision construing the South Carolina statute involved in this controversy, and holds that a suit against the Dispensary Commission (the appellants

in this case) is a suit against the State of South Carolina and, therefore, forbidden by the Eleventh Amendment. The South Carolina Supreme Court is entitled to, and has, our most profound respect, but under the circumstances we do not feel at liberty to adopt the construction given by that tribunal to the South Carolina statute after the rights of complainant have accrued and after he has sought his remedy in a Circuit Court of the United States which has given a construction to the statute contrary to the decision subsequently rendered by the Supreme Court of the State. The law governing us is well settled in the case of *Burgess* vs. *Seligman*, 107 U. S., page 33, in which it is held.

"We do not consider ourselves bound to follow the decision of the State court in this case. When the transactions in controversy occurred, and when the case was under the consideration of the Circuit Court, no construction of the statute had been given by the State tribunals contrary to that given by the Circuit Court. The Federal courts have an independent jurisdiction in the administration of State laws, co-ordinate with and not subordinate to, that of the State courts, and are bound to exercise their own judgment as to the meaning and effect of those laws. The existence of two co-ordinate jurisdictions in the same territory is peculiar, and the results would be anomalous and inconvenient but for the exercise of mutual respect and deference. Since the ordinary administration of the law is carried on by the State courts, it necessarily happens that by the course of their decisions certain rules are established which become rules of property and action in the State, and have all the effect of law and which it would be wrong to disturb. This is especially true with regard to the law of real estate and the construction of State constitutions and statutes. Such established rules are always regarded by the Federal courts, no less than by the State courts themselves, as authoritative declarations of what the law is. But where the law has not been thus settled, it is the right and duty of the Federal courts to exercise their own judgment; as they always do in reference to the doctrines of commercial law and general jurisprudence. So when contracts and transactions have been entered into, and rights have accrued thereon under a particular state of the decisions, or when there has been no decision, of the State tribunals, the Federal courts properly claim the right to adopt

their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State courts after such rights have accrued."

And in the case of *Pease* v. *Peck*, 18 How. (59 U. S.), 595, we find the following principle laid down:

"When the decisions of the State court are not consistent we do not feel bound to follow the last, if it is contrary to our own convictions, and much more is this the case where, after a long course of consistent decisions, some new light suddenly springs up, or an excited public opinion has elicited new doctrines, subversive of former safe precedent. Cases may exist also when a cause is got up in a State court for the very purpose of anticipating our decision of a question known to be pending in this court. Nor do we feel bound in any case in which a point is first raised in the courts of the United States, and has been decided in a Circuit Court, to reverse that decision contrary to our own convictions, in order to conform to a State decision made in the meantime. Such decisions have not the character of established precedent declarative of the settled law of a State."

It is our conclusion, therefore, that the decree of the Circuit Court for the District of South Carolina, appealed from, should be affirmed. The case will be remanded to be further proceeded with in accordance with the views herein expressed.

Affirmed.

Order Staying Mandate for Forty Days.

Filed Sept. 15, 1908.

THE CIRCUIT COURT OF APPEALS OF THE UNITED STATES FOR THE FOURTH CIRCUIT.

W. J. Murray et al., Appellants,
vs.
The Fleischmann Company and others, Appellees.

On motion of J. Fraser Lyon, Attorney General, B. L. Abney, Stevenson & Matheson, and Anderson, Felder, Roundtree & Wilson, attorneys for appellants.

It is ordered that the mandate herein be stayed for forty days pending an application to the Supreme Court of the United States for a writ of certiorari for the review of the said proceeding.

EDMUND WADDILL, JR.,
Dist. Judge Presiding.

Richmond, Va., September 15, 1908.

And afterwards, at the same term, to-wit: on September 16, 1908, the court made and entered the following decree, to-wit:

Decree.

Filed Sept. 16, 1908.

UNITED STATES CIRCUIT COURT OF APPEALS,
FOURTH CIRCUIT.

No. 821.

W. J. Murray, J[illegible] McSween, Avery Patton et al., Appellants,
vs.
Wilson Distilling Company, et al., and The Fleischmann Company, Appellees.

Appeal from the Circuit Court of the United States for the District of South Carolina.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of South Carolina, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the decree of the said Circuit Court, in this cause, be, and the same is hereby, affirmed, with costs.

EDMUND WADDILL, JR.,
U. S. Dist. Judge Presiding.

Sept. 16, 1908.

Order Staying Mandate for Additional Thirty Days.

Filed Oct. 24, 1908.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

W. J. Murray et al., Appellants,
vs.
The Fleischmann Company, et al., Appellees.
} Order.

It is on motion of attorneys for appellants, and by consent of the attorneys for appellees, ordered that the mandate in this cause be and the same is hereby stayed for thirty days in addition to the forty days stay heretofore ordered.

This 24th day of October, 1908.

EDMUND WADDILL, JR.,
Presiding Judge.

Clerk's Certificate.

UNITED STATES OF AMERICA,
Fourth Circuit, } ss:

I, Henry T. Meloney, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true copy of the entire record and proceedings in the therein entitled cause as the same remains upon the records and files of the said Circuit Court of Appeals.

In testimony whereof I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, this 5th day of November, A. D., 1908.

(Seal of Court)

HENRY T. MELONEY,
Clerk U. S. Circuit Court of
Appeals, Fourth Circuit.

By CLAUDE M. DEAN,
Deputy Clerk.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fourth Circuit.

I, Henry T. Meloney, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do make return of the annexed writ of certiorari issued out of the Supreme Court of the United States in the cause therein entitled on the 8th day of December, 1908, by annexing hereto a certified copy of the stipulation of the attorneys of record, that the certified transcript of record on file in the Supreme Court of the United States, upon which the motion for certiorari was made, shall be issued for and constitute the return to the writ of certiorari.

In testimony whereof I hereto set my hand and affix the seal of the said Circuit Court of Appeals, at Richmond, on this 22nd day of December, A. D. 1908.

[Seal United States Circuit Court of Appeals, Fourth Circuit.]

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals
for the Fourth Circuit.

Supreme Court of the United States, October Term, 1908.

No. 625.

W. J. MURRAY ET AL., Appellants,
vs.
WILSON DISTILLING COMPANY ET AL. and THE FLEISCHMANN COMPANY, Appellees.

We, the undersigned attorneys for the Appellants and Appellees, do hereby stipulate and agree that the certified transcript of record on file in the Supreme Court of the United States, upon which the motion for certiorari was made, shall be issued for and constitute the return to the writ of certiorari in this case, issued on the 8th day of December, in the year of our Lord One Thousand nine hundred and eight.

Dated December the 12th, 1908.

W. F. STEVENSON,
D. S. MATHESON,
STEVENSON & MATHESON,
J. FRASER LYON,
BENJ. L. ABNEY,
Attorneys for Appellants.
T. MOULTRIE MORDECAI,
FRANK CARTER, &
H. C. CHEDESTER,
GEORGE B. LESTER,
ALFRED S. BARNARD,
Att'ys for Appellees.

UNITED STATES OF AMERICA, *ss:*

I, Henry T. Meloney, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing stipulation of counsel is a true copy of the original filed December 22, 1908, and now remaining among the records and proceedings in the therein entitled cause.

In testimony whereof I hereto set my hand and affix the seal of the said Circuit Court of Appeals, at Richmond, on this 22nd day of December, A. D. 1908.

[Seal United States Circuit Court of Appeals, Fourth Circuit.]

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals, 4th Circuit.

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Fourth Circuit, Greeting:

Being informed that there is now pending before you a suit in which W. J. Murray, John McSween, and Avery Patton, constituting The State Dispensary Commission of South Carolina, *et al.*, are appellants and Wilson Distilling Company *et al.*, and The Fleischmann Company are appellees, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the Circuit Court of the United States for the District of South Carolina, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 8th day of December, in the year of our Lord one thousand nine hundred and eight.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 21,421. Supreme Court of the United States. No. 625, October Term, 1908. W. J. Murray *et al. vs.* Wilson Distilling Co. *et al.* Writ of certiorari. The execution of the within writ appears from the schedules thereto annexed. Henry T. Meloney, Cl'k U. S. Cir. Ct. of Appeals, 4th Circuit.

[Endorsed:] File No. 21,421. Supreme Court U. S., October Term, 1908. Term No. 625. W. J. Murray *et al.*, Petitioners, *vs.* Wilson Distilling Co., *et al.* Writ of certiorari and return. Filed Dec. 23d, 1908.